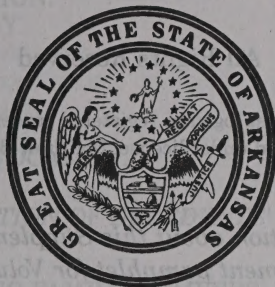


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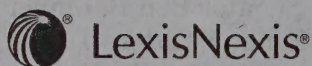
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TITLE 28

WILLS, ESTATES, AND FIDUCIARY RELATIONSHIPS

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OFFICIAL PROBATE FORMS

SUBTITLE 1. GENERAL PROVISIONS**CHAPTER 1****GENERAL PROVISIONS****28-1-102. Definitions.****CASE NOTES****Person.**

Probate court erred in finding that the limited liability company lacked standing to bring a petition for the determination of heirship, because the limited liability company alleged in the petition that it was a legal entity, so it was a person and

could bring the petition; “person” was defined under subdivision (18) of this section to include a corporation, partnership, or other legal entity. *McVesting, LLC v. Heirs of Macie McGoon*, 2012 Ark. App. 541 (2012).

28-1-104. Probate proceedings.**CASE NOTES****ANALYSIS****Adoption.**

Jurisdiction and Powers Generally.

Adoption.

For purposes of § 9-9-212, appellants claimed that the failure to file a home study for the adoption of the child was jurisdictional and required reversal; however, under subdivision (5) of this section, the trial court had jurisdiction to determine the child’s adoption and any error in relying on appellees’ home study had to be raised in the trial court to be preserved for review. *Wilson v. Golen*, 2013 Ark. App. 267, 427 S.W.3d 723 (2013).

Jurisdiction and Powers Generally.

Circuit court had jurisdiction over a petition to open an estate where the question — whether an operating agreement signed by both the decedent and his grandson authorized transfer of the decedent’s LLC interest outside of the estate to the grandson or whether the decedent’s interest should have transferred to his estate — involved the administration, settlement, and distribution of the decedent’s estate. *Estate of Cook v. Willhite*, 2020 Ark. App. 292, 601 S.W.3d 453 (2020).

28-1-113. Waiver of notice.**CASE NOTES****Personal Waiver.**

Circuit court did not clearly err when it found that appellant’s waiver of notice as written applied to “all proceedings” and that appellant did not intend it to be limited to only proceedings that involved the appointment of his parents as guard-

ians to his children, as opposed to other persons; although appellant could have limited under the statute his waiver to waive notice only of specific hearings, he failed to do so. *Paschall v. Paschall*, 2018 Ark. App. 514, 563 S.W.3d 592 (2018).

28-1-115. Vacation and modification of orders.

RESEARCH REFERENCES

Ark. L. Rev. Mark James Chaney, Recent Developments: Arkansas Supreme Court Holds the Appointment of a Special Personal Representative to an Estate Is

Voidable, but Not Void, upon the Discovery of a Disqualifying Characteristic, 66 Ark. L. Rev. 1145 (2013).

CASE NOTES

ANALYSIS

Jurisdiction.

Unqualified Personal Representative's Prior Acts.

Jurisdiction.

Probate court had jurisdiction to set aside its previous order determining heirship, because there was an extended period during which courts had jurisdiction to modify or vacate orders in probate proceedings, there had not been a final termination of the proceedings, and it was not entirely clear that the order determining heirship would have ended the proceedings. *McVesting, LLC v. Heirs of Macie McGoon*, 2012 Ark. App. 541 (2012).

Circuit court had the authority to set aside the order granting a petition for approval to make final distribution and

determine heirship because the vacated order did not terminate the estate, and thereby, did not fulfill the requirements of this statute. *Grant v. Williams*, 2013 Ark. App. 663, 430 S.W.3d 786 (2013).

Unqualified Personal Representative's Prior Acts.

Appointment of an unpardoned felon as a personal representative was voidable, rather than void ab initio, because (1) subsection (b) of this section states that no vacation of a probate court order affects a prior act, (2) § 28-48-105(b) states that removing a personal representative does not invalidate prior official acts, and (3) § 28-48-102(d)(2) also provides that a personal representative's acts before removal are valid. In re *Estate of L.C. Taylor v. MCSA, LLC*, 2013 Ark. 429, 430 S.W.3d 120 (2013).

28-1-116. Appeals.

CASE NOTES

ANALYSIS

Applicability.

Jurisdiction.

Ripeness.

Stay.

Time for Appeal.

Applicability.

Decedent's son's appeal was dismissed because prior to a hearing on the admission of the will to probate, he executed a waiver and entry of appearance and a disclaimer of his interest in the decedent's

estate, did not file a notice of appeal of an order staying the matter until a final distribution was made, and despite the denial of his motion to supplement the record, he included in his addendum materials found only in the supplemental volume and did not include certain necessary documents. *Stratton v. Stratton*, 2014 Ark. App. 292 (2014).

Jurisdiction.

Probate court had jurisdiction to set aside its previous order determining heirship, because there was an extended pe-

riod during which courts had jurisdiction to modify or vacate orders in probate proceedings, there had not been a final termination of the proceedings, and it was not entirely clear that the order determining heirship would have ended the proceedings. *McVesting, LLC v. Heirs of Macie McGoon*, 2012 Ark. App. 541 (2012).

In an appeal from an order appointing a permanent guardian of the person and estate of appellant's husband, the circuit court was without jurisdiction to appoint special administrators to act on appellant's behalf following her death after the record was lodged on appeal. Because the appeal did not have an appellant to prosecute the appeal, it was dismissed. *Guenther v. Guenther*, 2018 Ark. App. 538, 566 S.W.3d 132 (2018) (petition for special administrators was filed before the January 1, 2018 effective date of Ark. R. App. P. Civil 12).

Ripeness.

Because a circuit court had not yet ruled on the merits of a daughter's petition for guardianship over the person and estate of her mother, and because additional evidence was expected when a hearing resumed, evidentiary challenges were not yet ripe for review on the mother's appeal of the circuit court's order requiring an independent medical evaluation. *Howard v. Jenkins*, 2019 Ark. App. 15, 568 S.W.3d 771 (2019).

Stay.

In response to a jurisdictional argument under subdivision (e)(1) of this section, an appellate court considered a recusal argument in a probate matter out of an abundance of caution, even though there were no specific findings of no prejudice or a specific order permitting further proceedings in the order of a companion case. *Ashley v. Ashley*, 2012 Ark. App. 230 (2012).

Time for Appeal.

Because the notice of appeal by the trustee of the residuary beneficiary was timely filed within 30 days from entry of the circuit court's interlocutory order on Oct. 19, 2017, the appellate court had jurisdiction over the appeal and could review the circuit court's failure to enforce a family-settlement agreement. However, the appellate court did not have jurisdiction to hear a cross-appeal advancing a challenge to the family-settlement agreement because the contingent beneficiary did not file a notice of appeal within 30 days from the entry of the court's June 2, 2017, interlocutory order approving the family-settlement agreement. *Trask v. Trask*, 2018 Ark. App. 400, 559 S.W.3d 277 (2018).

Cited: *Grant v. Williams*, 2013 Ark. App. 663, 430 S.W.3d 786 (2013).

SUBTITLE 2. DESCENT AND DISTRIBUTION

CHAPTER 9

INTESTATE SUCCESSION

SUBCHAPTER.

2. ARKANSAS INHERITANCE CODE OF 1969.

SUBCHAPTER 2 — ARKANSAS INHERITANCE CODE OF 1969

SECTION.

28-9-221. Child conceived after death of parent.

28-9-203. Intestate succession generally.

RESEARCH REFERENCES

Ark. L. Rev. Andrew L. Lawson, “Body” Building: Expanding Arkansas’s Standard for Holographic Wills, 71 *Ark. L. Rev.* 917 (2019).

28-9-209. Legitimacy of child — Effect.

RESEARCH REFERENCES

Ark. L. Rev. Mark James Chaney, Recent Developments: Arkansas Supreme Court Holds Presumed-Legitimate Children Seeking to Inherit from Out-of-Wedlock Fathers Must Meet the Same Statutory Requirements as Illegitimate Children to Make a Claim Against an Estate, and Paternity Must Be Established Within 180 Days of the Decedent’s Death, 67 *Ark. L. Rev.* 509 (2014).

CASE NOTES

ANALYSIS

Constitutionality.
Inheritance by Illegitimate Child.

Constitutionality.

Requirement that an action be filed and a condition satisfied within 180 days did not violate a purported beneficiary’s federal constitutional due process rights because she had no right to bring a paternity action on her own behalf since she was a person for whom paternity was presumed. The purported beneficiary was seeking to recover as a pretermitted heir. *Bell v. McDonald*, 2014 Ark. 75, 432 S.W.3d 18 (2014).

Requirement that an action be filed and a condition satisfied within 180 days did not violate a purported beneficiary’s federal constitutional equal protection rights because she had no right to bring a paternity action on her own behalf since she was a person for whom paternity was presumed. The purported beneficiary was seeking to recover as a pretermitted heir. *Bell v. McDonald*, 2014 Ark. 75, 432 S.W.3d 18 (2014).

Inheritance by Illegitimate Child.

Under a plain reading of the language in this section, one of the six conditions must have been satisfied and an action commenced or a claim asserted against

the estate prior to the expiration of the 180-day time period. Therefore, where a paternity case was not completed within the time period, a purported beneficiary failed to state a claim to recover from an estate as a pretermitted heir. *Bell v. McDonald*, 2014 Ark. 75, 432 S.W.3d 18 (2014).

Circuit court did not err in recognizing a son born out of wedlock as the decedent’s sole heir because the son satisfied the written-acknowledgment condition in subsection (d) of this section; a beneficiary-designation form depicted that the decedent clearly wrote “son” and provided the son’s proper name, Social Security number, date of birth, address, phone number, and gender on the form, and the 180-day limit was satisfied because the form was completed before decedent’s death. *Noble v. Neal*, 2019 Ark. App. 86, 572 S.W.3d 40 (2019).

Court’s establishment of paternity is the particular statutory condition that must be met within 180 days following decedent’s death; a decedent’s acknowledgment must have been accomplished before the decedent’s death, allowing a child born out of wedlock 180 days following a putative father’s death to make a claim based on the decedent’s written acknowledgment. *Noble v. Neal*, 2019 Ark. App. 86, 572 S.W.3d 40 (2019).

28-9-210. Posthumous heirs.**RESEARCH REFERENCES**

Ark. L. Rev. Patrick Grecu, The New Arkansas's Posthumously Conceived Child: Addressing the Deficiencies in the Arkansas Statute, 72 Ark. L. Rev. 631 (2020).

28-9-221. Child conceived after death of parent.

(a) A child of a decedent who is conceived and born after the death of the decedent shall be deemed the legitimate child of the decedent for the purposes of intestate succession if:

(1) Either of the following apply:

(A) The decedent consented in a record to the use of his or her genetic material to posthumously conceive a child by assisted reproduction; or

(B) The intent of the decedent to conceive a child by assisted reproduction after the death of the decedent is established by clear and convincing evidence; and

(2) The embryo of the posthumously conceived child is in utero no later than twenty-four (24) months after the death of the decedent.

(b)(1) Within six (6) months of the death of a decedent, a person designated by the decedent to control the decedent's genetic material shall provide written notice advising the personal representative with the authority to control the distribution of the decedent's estate of the availability of the decedent's genetic material for possible use.

(2) Failure to provide the notice required under subdivision (b)(1) of this section in a timely manner shall absolve a personal representative with the authority to control the distribution of the decedent's estate from liability for distributing the decedent's estate as otherwise authorized by law after the six-month period to provide the notice lapses.

(3) If a personal representative with the authority to control the distribution of the decedent's estate receives the notice required under subdivision (b)(1) of this section before the six-month period to provide the notice lapses, the fiduciary shall retain any remaining assets of the decedent's estate to which a posthumous child of the decedent may have a valid claim until three (3) years after the death of the decedent.

(c) Unless otherwise agreed by a decedent and his or her spouse, the consent of the decedent to posthumous conception with his or her spouse shall be automatically revoked upon the divorce of the decedent and his or her spouse.

History. Acts 2015, No. 1256, § 1; 2021, No. 924, § 1.

Amendments. The 2021 amendment rewrote the section.

RESEARCH REFERENCES

Ark. L. Rev. Patrick Grecu, The New Arkansas's Posthumously Conceived Children Statute, 72 Ark. L. Rev. 631 (2020).

CHAPTER 11

DOWER AND CURTESY

SUBCHAPTER.

2. ENTITLEMENT GENERALLY.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. J. Cliff Dower and Curtesy in Arkansas, 38 U. McKinney, With All My Worldly Goods I Ark. Little Rock L. Rev. 353 (2016).
Thee Endow: The Law and Statistics of

SUBCHAPTER 1 — GENERAL PROVISIONS

28-11-101. Definition.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. J. Cliff Dower and Curtesy in Arkansas, 38 U. McKinney, With All My Worldly Goods I Ark. Little Rock L. Rev. 353 (2016).
Thee Endow: The Law and Statistics of

28-11-102. Descent of land upon death of spouse having dower or curtesy interest.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. J. Cliff Dower and Curtesy in Arkansas, 38 U. McKinney, With All My Worldly Goods I Ark. Little Rock L. Rev. 353 (2016).
Thee Endow: The Law and Statistics of

SUBCHAPTER 2 — ENTITLEMENT GENERALLY

SECTION.

28-11-204. Murder of spouse — Effect.

28-11-201. Actions of spouse not to bar right to dower or curtesy.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. J. Cliff Dower and Curtesy in Arkansas, 38 U.
McKinney, With All My Worldly Goods I Ark. Little Rock L. Rev. 353 (2016).
Thee Endow: The Law and Statistics of

28-11-203. Right of dower and curtesy barred.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. J. Cliff Dower and Curtesy in Arkansas, 38 U.
McKinney, With All My Worldly Goods I Ark. Little Rock L. Rev. 353 (2016).
Thee Endow: The Law and Statistics of

28-11-204. Murder of spouse — Effect.

(a) Whenever a spouse shall kill or slay his or her spouse and the killing or slaying would under the law constitute murder, either in the first or second degree, and that spouse shall be convicted of murder for the killing or slaying, in either the first or second degree, the one so convicted shall not be endowed in the real or personal estate of the decedent spouse so killed or slain.

(b) In the event that a decedent spouse under this section dies without a will, the descendents of the one so convicted shall not benefit from the estate of the decedent spouse unless the descendents of the spouse that committed the murder are also descendants of the decedent spouse.

History. Acts 1939, No. 313, § 3; A.S.A.
1947, § 61-230; Acts 2013, No. 1019, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. J. Cliff Dower and Curtesy in Arkansas, 38 U.
McKinney, With All My Worldly Goods I Ark. Little Rock L. Rev. 353 (2016).
Thee Endow: The Law and Statistics of

SUBCHAPTER 3 — EXTENT OF INTEREST**28-11-301. Land generally.****RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. J. Cliff Dower and Curtesy in Arkansas, 38 U.
McKinney, With All My Worldly Goods I Ark. Little Rock L. Rev. 353 (2016).
Thee Endow: The Law and Statistics of

28-11-303. Mortgaged land.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. J. Cliff McKinney, With All My Worldly Goods I Thee Endow: The Law and Statistics of	Dower and Curtesy in Arkansas, 38 U. Ark. Little Rock L. Rev. 353 (2016).
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28-11-305. Personalty.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. J. Cliff McKinney, With All My Worldly Goods I Thee Endow: The Law and Statistics of	Dower and Curtesy in Arkansas, 38 U. Ark. Little Rock L. Rev. 353 (2016).
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CASE NOTES

Inchoate Right of Dower.

Bankruptcy debtor husband had no curtesy interest to exempt in stock owned by the co-debtor wife on the bankruptcy petition date since the wife, as the sole legal owner, was still living, and the husband's curtesy right had not yet accrued and did not become property of the husband's estate on the filing of the bankruptcy petition. In re Tankersley, 575 B.R. 848 (Bankr. E.D. Ark. 2017).

Bankruptcy debtor wife had no dower interest to exempt in the co-debtor husband's life insurance policy on the filing of the bankruptcy petition since the wife was neither an insured nor a beneficiary under the policy, and thus no interest in the policy became part of the wife's bankruptcy estate. In re Tankersley, 575 B.R. 848 (Bankr. E.D. Ark. 2017).

28-11-306. Bonds, notes, accounts, and evidences of debt.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. J. Cliff McKinney, With All My Worldly Goods I Thee Endow: The Law and Statistics of	Dower and Curtesy in Arkansas, 38 U. Ark. Little Rock L. Rev. 353 (2016).
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28-11-307. Dower or curtesy when no children.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. J. Cliff McKinney, With All My Worldly Goods I Thee Endow: The Law and Statistics of	Dower and Curtesy in Arkansas, 38 U. Ark. Little Rock L. Rev. 353 (2016).
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CASE NOTES

Equitable Title.

Bankruptcy debtor husband properly claimed an exemption in his curtesy interest in the co-debtor wife's real properties—that the wife inherited from a parent; the husband's inchoate interest in the ances-

tral properties, which was in the nature of a life estate rather than a fee simple estate, was property of the husband's bankruptcy estate. In re Tankersley, 575 B.R. 848 (Bankr. E.D. Ark. 2017).

SUBCHAPTER 4 — PROVISIONS IN LIEU OF DOWER OR CURTESY

28-11-401. Jointure or payment with spouse's assent.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. J. Cliff Dower and Curtesy in Arkansas, 38 U. McKinney, With All My Worldly Goods I Ark. Little Rock L. Rev. 353 (2016).
Thee Endow: The Law and Statistics of

28-11-403. Devise or bequest — Election of spouse.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. J. Cliff Dower and Curtesy in Arkansas, 38 U. McKinney, With All My Worldly Goods I Ark. Little Rock L. Rev. 353 (2016).
Thee Endow: The Law and Statistics of

28-11-405. Forfeiture.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. J. Cliff Dower and Curtesy in Arkansas, 38 U. McKinney, With All My Worldly Goods I Ark. Little Rock L. Rev. 353 (2016).
Thee Endow: The Law and Statistics of

CHAPTER 13

ESCHEATED ESTATES

28-13-110. Reclamation of escheated property.

CASE NOTES

Substantial Compliance.

Group of heirs had substantially complied with this section when they timely filed their petition seeking their per stirpes share of the decedent's estate and

had the county attorney accept service. Thus, the circuit court erred when it dismissed their petition with prejudice. Lucas v. Wash. Cty., 2020 Ark. App. 540, 614 S.W.3d 840 (2020).

CHAPTER 14

UNIFORM TOD SECURITY REGISTRATION ACT

28-14-107. Ownership on death of owner.

CASE NOTES

Jurisdiction.

In creditor's action to set aside an alleged fraudulent conveyance arising from a transfer-on-death (TOD) beneficiary designation, the circuit court erroneously ruled that the probate court had exclusive jurisdiction and that the circuit court lacked jurisdiction; under Ark. Const. Amend. 80, § 6, and the fact that, under

the Uniform Transfer on Death Security Registration Act, § 28-14-101 et seq., the money transferred from the TOD account did not become part of the estate, the circuit court clearly had jurisdiction. *Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc.*, 2019 Ark. 371, 584 S.W.3d 685 (2019).

28-14-109. Nontestamentary transfer on death.

RESEARCH REFERENCES

Ark. L. Rev. Isabelle V. Taylor, Comment: Creditor Rights and the Missing Link in the Arkansas Trust Code: Is Death

Strong Enough "To Break the Chain?", 65 Ark. L. Rev. 433 (2012).

CASE NOTES

ANALYSIS

Jurisdiction.
Standing.

Jurisdiction.

In creditor's action to set aside an alleged fraudulent conveyance arising from a transfer-on-death (TOD) beneficiary designation, the circuit court erroneously ruled that the probate court had exclusive jurisdiction and that the circuit court lacked jurisdiction; under Ark. Const. Amend. 80, § 6, and the fact that, under the Uniform Transfer on Death Security Registration Act, § 28-14-101 et seq., the money transferred from the TOD account did not become part of the estate, the circuit court clearly had jurisdiction. *Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc.*, 2019 Ark. 371, 584 S.W.3d 685 (2019).

Standing.

In creditor's action to set aside an alleged fraudulent conveyance arising from a transfer-on-death (TOD) beneficiary designation, the transferee's argument failed that the personal representative of the estate and not the creditor had standing for such an action; while there are procedures within the probate code that would allow for the challenge of an alleged fraudulent conveyance, this section concerning TODs plainly allows creditors to pursue their claims against transferees under other Arkansas laws, and thus a creditor also may pursue its claim under the Fraudulent Transfers Act, § 4-59-201 et seq. *Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc.*, 2019 Ark. 371, 584 S.W.3d 685 (2019) (decided under pre-2017 version of § 4-59-201 et seq.).

SUBTITLE 3. WILLS

CHAPTER 24

GENERAL PROVISIONS

28-24-101. Contracts affecting the devise of property.

CASE NOTES

ANALYSIS

Creation of Revocable Will.
Evidence.

Creation of Revocable Will.

Wife had the power to amend her will and trust after the husband’s death as the parties had not intended for the trust to be irrevocable, thereby negating the argument that reciprocal wills were created. *Cason v. Lambert*, 2015 Ark. App. 41, 454 S.W.3d 250 (2015).

Evidence.

Circuit court did not clearly err in finding that there was no contractual agree-

ment between a husband and wife to make their trusts irrevocable where there was no writing to that effect, both husband and wife reserved the right to amend, modify, or revoke the trusts in whole or in part at any time, and the only evidence supporting the contention that the husband executed an irrevocable trust came from witnesses related to the wife. *Holmes v. Potter*, 2017 Ark. App. 378, 523 S.W.3d 397 (2017).

CHAPTER 25

EXECUTION AND REVOCATION

SECTION.

28-25-111. Life insurance policy or annuity contract — Proceeds.

28-25-103. Execution generally.

RESEARCH REFERENCES

Ark. L. Rev. Andrew L. Lawson, “Body” for Holographic Wills, 71 Ark. L. Rev. 917 Building: Expanding Arkansas’s Standard (2019).

28-25-104. Holographic wills generally.

RESEARCH REFERENCES

Ark. L. Rev. Andrew L. Lawson, “Body” for Holographic Wills, 71 Ark. L. Rev. 917 Building: Expanding Arkansas’s Standard (2019).

CASE NOTES

Instruments Constituting Holographic Wills.

Judge’s handwritten will, which was undated and contained blanks in the attestation clause, met the requirements of this section, which requires only that the entire body of the will be written in the testator’s handwriting and signed; this section does not require a date or witnesses to attest execution. The four cor-

ners of the document demonstrated that the judge intended to make a testamentary disposition, as it was titled as a last will, it disposed of the judge’s property, and was written entirely in the judge’s own handwriting and signed at the bottom. *Marcum v. Gibson* (In re Estate of Bond), 2019 Ark. App. 241, 576 S.W.3d 38 (2019).

28-25-109. Revocation of wills.

RESEARCH REFERENCES

Ark. L. Notes. Lonnie Beard, Questioning the practice of executing duplicate original wills, 2013 Ark. L. Notes 1030.

CASE NOTES

Residual Legatees.

Residuary bequest to the decedent’s stepchildren in the decedent’s last will and testament was voided because the decedent’s spouse, who was removed from the will pursuant to an antenuptial agreement, did not predecease the decedent by 30 days so that the condition precedent in

the will that would have allowed the stepchildren to inherit under the terms of the will was not met. Further, the circuit court’s determination that the antenuptial agreement did not cancel the entirety of the decedent’s will was not clearly erroneous. *Craig v. Craig*, 2018 Ark. App. 489, 563 S.W.3d 560 (2018).

28-25-111. Life insurance policy or annuity contract — Proceeds.

A testamentary change to a designated or named beneficiary of a life insurance policy or annuity contract is ineffective if the change is not made according to the terms of the life insurance policy or annuity contract.

History. Acts 2021, No. 925, § 2.

CHAPTER 26

CONSTRUCTION AND OPERATION

28-26-103. Partial intestacy.

CASE NOTES

Properties Not Devised.

Residuary bequest to the decedent’s stepchildren in the decedent’s last will and testament was voided because the

decedent’s spouse, who was removed from the will pursuant to an antenuptial agreement, did not predecease the decedent by 30 days so that the condition precedent in

the will that would have allowed the step-children to inherit under the terms of the will was not met. Further, the circuit court's determination that the antenu-

tial agreement did not cancel the entirety of the decedent's will was not clearly erroneous. *Craig v. Craig*, 2018 Ark. App. 489, 563 S.W.3d 560 (2018).

28-26-104. Failure of a testamentary provision.

CASE NOTES

Death of Legatee or Devisee Prior to Testator.

Circuit court erred in ruling that the interests of beneficiaries who predeceased the surviving settlor of an inter vivos trust lapsed upon the death of the beneficiaries;

rather, the beneficiaries' descendants were entitled to the beneficiaries' shares of the trust distribution upon the settlor's death. *Tait v. Community First Trust Co.*, 2012 Ark. 455, 425 S.W.3d 684 (2012).

SUBTITLE 4. ADMINISTRATION OF DECEDENTS' ESTATES

CHAPTER 39

RIGHTS OF SURVIVING FAMILY MEMBERS

SUBCHAPTER.

3. ASSIGNMENT OF DOWER AND CURTESY.

SUBCHAPTER 1 — ALLOWANCES TO FAMILY

28-39-101. Allowances to surviving spouse and minor children.

CASE NOTES

ANALYSIS

Corporate Property.
Timeliness.

Corporate Property.

In a probate case, a circuit court erred in awarding property that was titled solely in the corporate name to the spouse as part of her statutory allowances; this section is applicable to the personal estate of the decedent. *Chandler v. Harris*, 2016 Ark. App. 155, 485 S.W.3d 716 (2016).

Timeliness.

In a probate case, because no final distribution had been made and possession of personal property was still vested with a personal representative, a spouse's request for her statutory allowances under this section was timely. *Chandler v. Harris*, 2016 Ark. App. 155, 485 S.W.3d 716 (2016).

SUBCHAPTER 3 — ASSIGNMENT OF DOWER AND CURTESY

SECTION.

28-39-303. Proceedings for allotment.

28-39-303. Proceedings for allotment.

(a) If dower or curtesy is not assigned to the surviving spouse within one (1) year after the death of his or her spouse, or within three (3) months after demand made therefor, the surviving spouse may file a written petition in the circuit court. This petition shall include a description of the lands in which he or she claims dower or curtesy, the names of those having interest in the lands, and the amount of the interest briefly stated in ordinary language with a prayer for the allotment of dower or curtesy. All persons interested in the property shall be summoned to appear and answer the petition.

(b) Upon the petition's by all interested in the property being filed, or upon a summons being served upon all who have an interest in the property, the circuit court may make an order for the allotment of dower or curtesy according to the rights of the parties by commissioners appointed according to law.

(c) Parties interested may be constructively summoned, as provided by Rule 4 of the Arkansas Rules of Civil Procedure.

(d)(1) No verification shall be required to the petition or answer.

(2) Petitions for dower or curtesy shall be heard and determined by the court without the necessity of formal pleading upon the petition, answer, exhibits, and other testimony.

(e) If the petition is filed against infants or persons of unsound mind, the guardian or committee may appear and defend for them and protect their interests, and, if the guardian or committee does not appear and defend, the court shall appoint some discreet person for that purpose.

(f) If any person summoned, as provided in this section, desires to contest the rights of the petitioner or the statements in the petition, he or she shall do so by a written answer, and the questions of the law and fact thereupon arising shall be tried and determined by the circuit court.

(g) The costs of the division and allotment shall be apportioned among the parties in the ratio of their interests, and the costs arising from any contest of fact or law shall be paid by the party adjudged to be in the wrong.

History. Rev. Stat., ch. 52, §§ 32, 37, 714, §§ 52-54; A.S.A. 1947, §§ 62-704 — 39; Civil Code, §§ 538-541, 543, 547, 548; 62-710, 62-721; Acts 2003, No. 1185, C. & M. Dig., §§ 3547-3552, 3560; Pope's § 275; 2013, No. 1148, § 59. Dig., §§ 4433-4438, 4446; Acts 1981, No.

SUBCHAPTER 4 — TAKING AGAINST THE WILL

28-39-401. Rights of surviving spouse — Limitations.

RESEARCH REFERENCES

Ark. L. Rev. Maria Korzendorfer, Case Note: In re Estate of Thompson: The Shortcomings of the Arkansas Elective Share Statute, 68 Ark. L. Rev. 1089 (2016).
U. Ark. Little Rock L. Rev. Lucy L.

Holifield, Note: Property Law—Upending the Familiar Tools of Estate Planning: Equity Renders Revocable Trusts Subject to the Arkansas Spousal Election. In re Estate of Thompson, 38 U. Ark. Little Rock L. Rev. 75 (2015).

Lynn Foster, Arkansas’s Trust Code and Trust Planning: A Ten-Year Perspective, 38 U. Ark. Little Rock L. Rev. 301 (2016).

CASE NOTES

Election.

Surviving spouse alleging a decedent defrauded the spouse of the spouse’s right to an elective share of the decedent’s estate did not have to show common-law fraud because “fraud on marital rights” was not akin to common-law fraud. Thompson v. Thompson, 2014 Ark. 237, 434 S.W.3d 877 (2014).

When a decedent’s inter vivos trust defeated a surviving spouse’s share of the decedent’s estate, it was no error to let the spouse take from trust assets because (1) the assets were included in the decedent’s estate only to calculate the spouse’s elec-

tive share, and (2) the trust was otherwise left intact. Thompson v. Thompson, 2014 Ark. 237, 434 S.W.3d 877 (2014).

It was no error to find a decedent intended to defraud a surviving spouse of the spouse’s share of the decedent’s estate because (1) evidence supported multiple findings that the decedent’s \$100,000 bequest intended to deprive the spouse of the spouse’s share of the decedent’s \$6 million estate, and (2) the decedent’s inter vivos gifts to the spouse were not considered as the gifts were not testamentary when made. Thompson v. Thompson, 2014 Ark. 237, 434 S.W.3d 877 (2014).

28-39-407. Rights of children or issue — Limitations.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Lynn Foster, Arkansas’s Trust Code and Trust

Planning: A Ten-Year Perspective, 38 U. Ark. Little Rock L. Rev. 301 (2016).

CHAPTER 40
PROBATE AND GRANT OF ADMINISTRATION.

SUBCHAPTER 1 — PROCEEDINGS GENERALLY

28-40-103. Time limit for probate and administration.

CASE NOTES

ANALYSIS

Interests in Property.
Probate Barred.

Interests in Property.

2012 Arkansas probate of the decedent’s will was proper because that will had previously been admitted to probate in Florida; even then, however, if the real property involved were purchased after the death of the testator by a third party from a person who, but for the will, would

have been the intestate heir of the decedent, interests in the property would not be affected by the probate of the will after the expiration of the five-year period if the instrument of transfer had been recorded in the county where the real property is located. Christian v. McVesting, LLC, 2014 Ark. App. 509, 443 S.W.3d 578 (2014).

But for the will, the decedent’s son would have been the intestate heir of the decedent, and the son quitclaimed his interest in the property to a company by

an instrument recorded on June 24, 2009, and the will had not been admitted to probate in Arkansas until October 23, 2012; the trial court erred in denying the devisees' motion to intervene, given that, as named devisees of the property in question in the decedent's will, the devisees clearly had a recognized interest in the mineral interests in the property that the company's petition sought to settle. *Christian v. McVesting, LLC*, 2014 Ark. App. 509, 443 S.W.3d 578 (2014).

Probate Barred.

Probate division of the circuit court was statutorily time-barred from administer-

ing an estate under this section because the probate court had no authority to administer an estate past the five-year limit set forth in the statute. Furthermore, the passage of almost 100 years from the death of the title owners of the real property in the estate was not an exception to the statute. *Edwards v. Hart*, 2020 Ark. App. 182, 598 S.W.3d 543 (2020).

28-40-110. Notice of hearing on petitions.

CASE NOTES

Notice Form.

Notice took the form recommended by one statute, and the essence of the notice was that one heir was opening the decedent's estate, but the actual probate proceeding she pursued was for the collection of a small estate, and the notice required for that is found in another statute, and

appellants testified that they did not receive personal notice, and this testimony was not actually disputed; the trial court clearly erred when it found that the heir satisfied the statutory procedures for collection of a small estate. *Bryant v. Osborn*, 2014 Ark. 143 (2014).

28-40-111. Notice of appointment of personal representative.

CASE NOTES

Persons Entitled to Receive Notice.

Circuit court applied the correct legal standard in considering the creditor's claims against the estate as untimely and did not improperly determine that written service of notice was unnecessary; the circuit court's statements that the creditor knew of decedent's death merely provided background information. *CMS Inv. Holdings, LLC v. Estate of Wilson*, 2016 Ark. App. 545, 506 S.W.3d 292 (2016).

Because the creditor failed to obtain a ruling on the issue of the personal representative's reasonable diligence in searching for creditors of the estate, the issue was summarily disposed of on appeal. *CMS Inv. Holdings, LLC v. Estate of Wilson*, 2016 Ark. App. 545, 506 S.W.3d 292 (2016).

In determining whether the creditor was entitled to notice, the circuit court merely provided background information

that it deemed relevant to the issue of whether the creditor was either known or reasonably ascertainable, and it did not impose requirements on the creditor that were more stringent than the law provides. *CMS Inv. Holdings, LLC v. Estate of Wilson*, 2016 Ark. App. 545, 506 S.W.3d 292 (2016).

Circuit court did not clearly err when it determined that the creditor was not a known or reasonably ascertainable creditor; ample evidence supported its conclusion. *CMS Inv. Holdings, LLC v. Estate of Wilson*, 2016 Ark. App. 545, 506 S.W.3d 292 (2016).

Circuit court did not improperly consider the merits of the creditor's claims against the estate when deciding whether the creditor was a known or reasonably ascertainable creditor and thus entitled to notice. *CMS Inv. Holdings, LLC v. Estate of Wilson*, 2016 Ark. App. 545, 506 S.W.3d 292 (2016).

28-40-113. Contest of will generally.**CASE NOTES****Timely Filing.**

Legal malpractice suit based on an attorney's handling of an estate was not ripe for adjudication because a challenge could still be raised in the probate proceedings

since the longer limitations period for challenges based on discovery of another will applied, even if the challenge was supported by a copy of the will. *Kennedy v. Ferguson*, 679 F.3d 998 (8th Cir. 2012).

SUBCHAPTER 3 — PROVING A LOST OR DESTROYED WILL**28-40-302. Proving will.****RESEARCH REFERENCES**

Ark. L. Notes. Lonnie Beard, Questioning the practice of executing duplicate original wills, 2013 Ark. L. Notes 1030.

CASE NOTES**ANALYSIS**

Burden of Proof.
Lost Wills.

Burden of Proof.

Circuit court did not err in finding that subdivision (2)(A) of this section did not require a second will to have physically existed at the time of the father's death, given case law stating that subdivision (2)(A) meant legal existence, not physical existence. *Cunningham v. Dillard* (In re Estate of Cunningham), 2019 Ark. App. 177, 574 S.W.3d 214 (2019).

Lost Wills.

Circuit court found that the statutory requirements were met and the estate rebutted the presumption of revocation; the testimony overcame the presumption, as there was ample evidence that decedent was determined her son would not inherit anything, plus she believed her estate planning was complete, and the admission of a copy of the will to probate

was not found to be error. *Whatley v. Estate of McDougal*, 2013 Ark. App. 709, 430 S.W.3d 875 (2013).

Testimony supported a conclusion that the will was in existence at the time of the decedent's death, and it was not necessary for the circuit court to determine what happened to the decedent's original will; it was enough that the trial court found that the will was not revoked or cancelled by the decedent. *Whatley v. Estate of McDougal*, 2013 Ark. App. 709, 430 S.W.3d 875 (2013).

In a lost will case, there was no strong, cogent, or convincing evidence about the circumstances under which the purported will was produced—it may have been typewritten, handwritten, or printed from a computer. In the absence of proof of one of the necessary elements to prove a lost will, it could not be said that the circuit court erred in finding that the executrix of the decedent's estate failed to prove both the execution and contents of the will. *Griffith v. Griffith*, 2018 Ark. App. 122, 545 S.W.3d 212 (2018).

CHAPTER 41**DISTRIBUTION WITHOUT ADMINISTRATION****SECTION.**

28-41-101. Collection of small estates by distributee.

SECTION.

28-41-102. Payment, transfers, or deliveries pursuant to affidavit.

28-41-101. Collection of small estates by distributee.

(a)(1) The distributee of an estate may collect and distribute the assets of an estate under this section without the appointment of a personal representative when:

(A) No petition for the appointment of a personal representative is pending or has been granted;

(B) Forty-five (45) days have elapsed since the death of the decedent;

(C)(i) The value, less encumbrances, of all property owned by the decedent at the time of death does not exceed one hundred thousand dollars (\$100,000).

(ii) When calculating the value of all property owned by the decedent under subdivision (a)(1)(C)(i) of this section, the value of the decedent's homestead and the value of any statutory allowances for the benefit of a spouse or minor children, if any, shall be excluded;

(D) One (1) or more of the distributees files an affidavit with the probate clerk of the circuit court of the county of proper venue for administration stating:

(i) That there are no unpaid claims or demands against the decedent or his or her estate, that the Department of Human Services furnished no federal or state benefits to the decedent, or, that if such benefits have been furnished, the department has been reimbursed in accordance with state and federal laws and regulations;

(ii) An itemized description and valuation of the personal property and a legal description and valuation of any real property of the decedent, including the homestead;

(iii) The names and addresses of persons having possession of the personal property and the names and addresses of any persons possessing or residing on any real property of the decedent; and

(iv) The names, addresses, and relationship to the decedent of the persons entitled to and who will receive the property; and

(E) A copy of the affidavit certified by the clerk is furnished to any person owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right.

(2) The distributee of an estate may open a checking account or savings account in a bank within this state in the name of the estate and on behalf of the estate without filing a petition for probate and administration or obtaining a court order granting a petition for probate and administration in accordance with § 28-40-101 et seq.

(b)(1)(A) The clerk shall file the affidavit, assign it a number, and index it as required by § 28-1-108(1).

(B) He or she shall make a charge of twenty-five dollars (\$25.00) for filing the affidavit and five dollars (\$5.00) for each certified copy.

(C) An order of the court or other proceeding is not necessary.

(D) An additional fee shall not be charged if a will is attached to the affidavit.

(2)(A) If an estate collected under this section contains real property, in order to allow for claims against the estate to be presented, the distributee shall cause a notice of the decedent's death and the filing of an affidavit for the collection of his or her estate to be published within thirty (30) days after the affidavit has been filed.

(B) The notice shall be in substantially the following form:
"In the Circuit Court of County, Arkansas
Probate Division
In the Matter of the Estate of, Deceased. No.
Name of decedent
Last known address
Date of death
On, an affidavit for collection of small estate by distributee was filed with respect to the estate of, deceased, with the clerk of the probate division of the circuit court of County, Arkansas, under Ark. Code Ann. § 28-41-101.

All persons having claims against the estate must exhibit them, properly verified, to the distributee or his or her attorney within three (3) months from the date of the first publication of this notice or they shall be forever barred and precluded from any benefit of the estate.

The name, mailing address, and telephone number of the distributee or distributee's attorney is:

.....
This notice first published, 20...".

(C) Publication of the notice shall be as provided in §§ 28-1-112(b)(4) and 28-40-111(a)(4).

History. Acts 1949, No. 140, § 66; 1951, No. 255, § 5; 1967, No. 287, § 4; 1975, No. 620, § 6; 1979, No. 641, § 1; 1981, No. 714, § 67; 1983, No. 133, § 1; A.S.A. 1947, § 62-2127; Acts 1987, No. 163, § 1; 1989, No. 960, § 1; 1993, No. 415, § 3; 1993, No. 687, § 1; 1999, No. 992, § 1; 2001, No. 1809, § 8; 2003, No. 1185, § 278; 2003, No. 1765, § 38; 2005, No. 899, § 1; 2011, No. 289, § 1; 2011, No. 761, § 1; 2013, No. 230, § 1; 2015, No. 526, § 1; 2017, No. 649, § 1; 2021, No. 423, § 2.

A.C.R.C. Notes. Acts 2021, No. 423, § 1, provided: "This act shall be known

and may be cited as 'Carmack's Law'."
Amendments. The 2017 amendment substituted "may collect and distribute the assets of an estate under this section" for "shall be entitled thereto" in the introductory language of (a); rewrote (a)(3) and the introductory language of (a)(4); and, in (a)(5), substituted "A copy of the affidavit certified by the clerk is furnished" for "There is furnished" and deleted "a copy of the affidavit certified by the clerk" at the end.
The 2021 amendment added (a)(2); re-designated former (a) as (a)(1); redesignated the subdesignations of former (a)

accordingly; and substituted “subdivision (a)(1)(C)(i)” for “subdivision (a)(3)(A)” in (a)(1)(C)(ii).

CASE NOTES

ANALYSIS

Notice.
Relief.

Notice.

Heir’s failure to act in substantial compliance with the Probate Code required the court to hold that her disposition of the property was void; she was never appointed as administrator, the decedent’s will was never admitted or declared valid, and appellants never received notice of the collection of the small estate, and the administrator’s deed was void. *Bryant v. Osborn*, 2014 Ark. 143 (2014).

Notice took the form recommended by one statute, and the essence of the notice was that one heir was opening the decedent’s estate, but the actual probate proceeding she pursued was for the collection

of a small estate, and the notice required for that is found in another statute, and appellants testified that they did not receive personal notice, and this testimony was not actually disputed; the trial court clearly erred when it found that the heir satisfied the statutory procedures for collection of a small estate. *Bryant v. Osborn*, 2014 Ark. 143 (2014).

Relief.

Alleged granddaughter of a decedent was not entitled to relief under Ark. R. Civ. P. 60 from the declaration at the request of the decedent’s niece that, inter alia, the alleged granddaughter was not an heir to the estate, as the alleged granddaughter had merely reargued the merits of the case. *Cotton v. Robinson*, 2015 Ark. App. 451 (2015).

28-41-102. Payment, transfers, or deliveries pursuant to affidavit.

(a) The person making payment, transfer, or delivery pursuant to the affidavit described in § 28-41-101 shall be released to the same extent as if made to a personal representative of the decedent, and he or she shall not be required to see to the application thereof or to inquire into the truth of any statement in the affidavit.

(b)(1) The distributee to whom payment, transfer, or delivery is made, as trustee, shall be answerable to any person having a prior right and shall be accountable to any personal representative thereafter appointed.

(2) However, if notice to creditors of the decedent’s death and the collection of his or her estate is published as provided by § 28-41-101, all claims as to real property within the estate, in any event, shall be forever barred at the end of three (3) months after the date of the first publication of the first notice.

(3) Nothing in this section shall affect or prevent any action or proceeding to enforce any mortgage, pledge, or other lien arising under contract or statute upon the property of the estate.

(c) If the person to whom the affidavit is delivered refuses to pay, transfer, or deliver the property as provided in this section, the property may be recovered or delivery compelled in an action brought in a court of competent jurisdiction for such a purpose by or in behalf of the distributee entitled to the property upon proof of the facts required to be stated in the affidavit.

(d) If the distributee who is entitled to the transfer or delivery of real property complies with the affidavit and notice requirements under § 28-41-101, the three-month period required under § 28-41-101 lapses, and a claim is not presented to the distributee within the three-month period or all claims against the estate that were presented to the distributee within the three-month period are satisfied, then the distributee shall:

(1) Be authorized to issue to himself or herself a deed of distribution for the real property of the decedent as if made by a personal representative of the decedent; and

(2) Deliver notice of the transfer of ownership to the county assessor of each county where the real property is located.

(e)(1) If a claim against an estate is presented to the distributee of the estate within three (3) months from the date of the first publication of the notice required under § 28-41-101, then the distributee shall file a petition for the administration of the estate in accordance with § 28-40-101 et seq.

(2)(A) A distributee is not required to comply with subdivision (e)(1) of this section if the claim against the estate is satisfied without using property owned by the decedent at the time of death.

(B) If a claim against the estate is satisfied in the manner described under subdivision (e)(2)(A) of this section, the claimant shall present to the distributee an acknowledgement of the satisfied claim.

(3)(A) If a petition for the administration of an estate is filed as required under subdivision (e)(1) of this section, then a new notice shall be published in accordance with § 28-40-111.

(B) The publication of notice filed by a distributee in accordance with § 28-41-101 is insufficient notice with regard to a petition for the administration of an estate filed as required under this subsection.

(4)(A) The distributee shall pay a new filing fee when a petition for the administration of an estate is filed as required under this subsection.

(B) A distributee is not entitled to a credit or refund of the fee paid to file the affidavit of small estate required under § 28-41-101.

History. Acts 1949, No. 140, § 67; A.S.A. 1947, § 62-2128; Acts 1993, No. 687, § 2; 2001, No. 1229, § 1; 2011, No. 761, § 2; 2017, No. 1021, §§ 1, 2.

Amendments. The 2017 amendment rewrote the introductory language of (d); and added (e).

CHAPTER 48

PERSONAL REPRESENTATIVES

SUBCHAPTER.

1. GENERAL PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

28-48-101. Persons entitled to domiciliary letters.

SECTION.

28-48-102. Letters — Issuance — Form.

Effective Dates. Acts 2015, No. 844,
§ 2: Jan. 1, 2016.

28-48-101. Persons entitled to domiciliary letters.

(a) Domiciliary letters testamentary or of general administration may be granted to one (1) or more of the natural or corporate persons mentioned in this section who are not disqualified, in the following order of priority:

- (1) To the executor or executors nominated in the will;
- (2) To the surviving spouse, or his or her nominee, upon petition filed during a period of thirty (30) days after the death of the decedent;
- (3) To one (1) or more of the persons entitled to a distributive share of the estate, or his or her nominee, as the court in its discretion may determine, if application for letters is made within forty (40) days after the death of the decedent, in case there is a surviving spouse and, if no surviving spouse, within thirty (30) days after the death of the decedent; and

- (4) To any other qualified person.

(b) A person is not qualified to serve as domiciliary personal representative if the person is:

- (1) Under eighteen (18) years of age;
- (2) Of unsound mind;
- (3) A convicted and unpardoned felon, either under the laws of the United States or of any state or territory of the United States;
- (4) A corporation not authorized to act as fiduciary in this state;
- (5) A person whom the court finds unsuitable; or
- (6)(A) A natural person who is a nonresident of this state, unless he or she shall have appointed the clerk of the court in which the proceedings are pending, and the clerk's successors in office, or some person residing in the county of probate and approved by the court, as agent to accept service of process and notice in all actions and proceedings with respect to the estate.

(B) If a person other than the clerk who has been appointed process agent dies, becomes incompetent, or removes from the county, the clerk and his or her successors in office shall become the process agent.

(C) The appointment or agency may be revoked only upon the appointment of a qualified substitute agent.

(D) Upon the service of any process or notice on the agent, he or she shall immediately transmit the process or notice to the personal

representative by registered or certified mail, requesting a return receipt.

History. Acts 1949, No. 140, § 70; 1975, No. 620, § 7; A.S.A. 1947, § 62-2201; Acts 2015, No. 844, § 1.

CASE NOTES

Qualifications of Appointee.

Appointment of an unpardoned felon as a personal representative was voidable, rather than void ab initio, because (1) the court or parties did not know the personal representative was unqualified, so the court had jurisdiction to appoint the personal representative under §§ 28-48-101 to 28-48-103, and (2) another was appointed once the personal representative's disqualification was known. In re Estate of L.C. Taylor v. MCSA, LLC, 2013 Ark. 429, 430 S.W.3d 120 (2013).

Appointment of an unpardoned felon as a personal representative was voidable, rather than void ab initio, because (1) § 28-1-115(b) states that no vacation of a probate court order affects a prior act, (2) § 28-48-105(b) states that removing a personal representative does not invalidate prior official acts, and (3) § 28-48-102(d)(2) also provides that a personal representative's acts before removal are valid. In re Estate of L.C. Taylor v. MCSA, LLC, 2013 Ark. 429, 430 S.W.3d 120 (2013).

28-48-102. Letters — Issuance — Form.

(a) When a duly appointed personal representative has given such bond as may be required and the bond has been approved by the court or by the clerk, subject to confirmation by the court, or, if no bond is required, when the personal representative has filed with the clerk a written acceptance of his or her appointment, letters under the seal of the court shall be issued to him or her.

(b) The letters shall be in substantially the following form:

“In the Circuit Court of County, Arkansas.
In the Matter of the Estate of C.D., deceased.
No.

Letters of Administration (Testamentary)

Be it known that A.B., whose address is, having been duly appointed administrator of the estate (executor of the will) of C.D., deceased, who died on or about, 20...., and having qualified as such administrator (executor) is hereby authorized to act as such administrator (executor) for and in behalf of the estate and to take possession of the property thereof as authorized by law.

Issued this ...day of, 20....

_____, Clerk.
(Seal)”.
(c) Letters of administration with will annexed, administration in succession, and special administration shall conform with this form with appropriate modifications.

(d)(1)(A) Letters of administration are not necessary to empower the person appointed to act for the estate.

(B) Letters of administration are for the purpose of notifying third parties that the appointment of an administrator has been made.

(2) The order appointing the administrator empowers the administrator to act for the estate, and any act carried out under the authority of the order is valid.

History. Acts 1949, No. 140, § 71; A.S.A. 1947, § 62-2202; Acts 2007, No. 438, § 1; 2013, No. 1137, § 1.

CASE NOTES

Validity of Personal Representative's Acts Before Removal.

Appointment of an unpardoned felon as a personal representative was voidable, rather than void ab initio, because (1) § 28-1-115(b) states that no vacation of a probate court order affects a prior act, (2) § 28-48-105(b) states that removing a

personal representative does not invalidate prior official acts, and (3) subdivision (d)(2) of this section also provides that a personal representative's acts before removal are valid. In re Estate of L.C. Taylor v. MCSA, LLC, 2013 Ark. 429, 430 S.W.3d 120 (2013).

28-48-103. Special administrators.

CASE NOTES

Tort Claims.

Probate division of the circuit court had the authority under § 28-53-119 and this section to appoint a special administrator for the limited purpose of pursuing unliquidated tort claims that were not addressed before the estate of the special administrator's parent was closed. Although the circuit court did not use the word "reopen" in its order, its intent was clear enough because it found that the

decedent's estate was opened and closed without resolving wrongful death or survival claims and that a special administrator was necessary to pursue the claims. Arman v. Chi St. Vincent Hot Springs, 2019 Ark. App. 187, 574 S.W.3d 731 (2019).

Cited: Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc., 2019 Ark. 371, 584 S.W.3d 685 (2019).

28-48-105. Removal generally.

RESEARCH REFERENCES

Ark. L. Rev. Mark James Chaney, Recent Developments: Arkansas Supreme Court Holds the Appointment of a Special Personal Representative to an Estate Is

Voidable, but Not Void, upon the Discovery of a Disqualifying Characteristic, 66 Ark. L. Rev. 1145 (2013).

CASE NOTES

ANALYSIS

Effect of Removal.

Review.

Effect of Removal.

Appointment of an unpardoned felon as a personal representative was voidable, rather than void ab initio, because (1) § 28-1-115(b) states that no vacation of a probate court order affects a prior act, (2) subsection (b) of this section states that removing a personal representative does not invalidate prior official acts, and (3) § 28-48-102(d)(2) also provides that a personal representative's acts before removal are valid. In re Estate of L.C. Taylor v.

MCSA, LLC, 2013 Ark. 429, 430 S.W.3d 120 (2013).

Review.

Decision not to remove the personal representatives was not clearly erroneous, because the appellate court could not say that the circuit courts decision had left a definite and firm conviction that a mistake had been committed, when the circuit court admonished the personal representatives to put the widow's interests above their own since they owed her a fiduciary duty, and the circuit court understood that there was animosity but noted that there would be court supervision of the probate process. *Ashley v. Ashley*, 2012 Ark. App. 236, 405 S.W.3d 419 (2012).

28-48-108. Compensation of personal representative — Employment of attorneys, etc.

CASE NOTES

Attorney's Fees.

It was within the trial court's discretion to award attorney's fees to a successor trustee for services that were rendered in connection with the administration of an estate where it was apparent that there was a dispute regarding distribution that would require adjudication by a court, and

the successor trustee had litigated whether certain items of real property were trust assets and also the efficacy of the trust documents created by the wife after her husband's death. *Cason v. Lambert*, 2015 Ark. App. 41, 454 S.W.3d 250 (2015).

CHAPTER 49

MANAGEMENT OF ASSETS

28-49-103. Discovery of assets.

CASE NOTES

Jurisdiction of Court.

Circuit court did not err by refusing to enforce the family-settlement agreement as requested; this section did not authorize the circuit court to force someone to

give property to the decedent's estate simply because a person interested in the estate believed that it belonged to the decedent. *Trask v. Trask*, 2018 Ark. App. 400, 559 S.W.3d 277 (2018).

28-49-109. Fraudulent conveyances.**CASE NOTES****ANALYSIS**

Jurisdiction.

Standing.

Jurisdiction.

In creditor's action to set aside an alleged fraudulent conveyance arising from a transfer-on-death (TOD) beneficiary designation, the circuit court erroneously ruled that the probate court had exclusive jurisdiction and that the circuit court lacked jurisdiction; under Ark. Const. Amend. 80, § 6, and the fact that, under the Uniform Transfer on Death Security Registration Act, § 28-14-101 et seq., the money transferred from the TOD account did not become part of the estate, the circuit court clearly had jurisdiction. *Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc.*, 2019 Ark. 371, 584 S.W.3d 685 (2019).

Standing.

In creditor's action to set aside an alleged fraudulent conveyance arising from a transfer-on-death (TOD) beneficiary designation, the transferee's argument failed that the personal representative of the estate and not the creditor had standing for such an action; while there are procedures within the probate code that would allow for the challenge of an alleged fraudulent conveyance, section 28-14-109(b) concerning TODs plainly allows creditors to pursue their claims against transferees under other Arkansas laws, and thus a creditor also may pursue its claim under the Fraudulent Transfers Act, § 4-59-201 et seq. *Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc.*, 2019 Ark. 371, 584 S.W.3d 685 (2019) (decided under pre-2017 version of § 4-59-201 et seq.).

CHAPTER 50**CLAIMS AGAINST ESTATES****28-50-101. Limitations on filing of claims.****CASE NOTES**

Claims Barred.

Circuit court did not clearly err when it determined that the creditor was not a known or reasonably ascertainable creditor, and thus its decision that the creditor's claims were untimely was upheld.

CMS Inv. Holdings, LLC v. Estate of Wilson, 2016 Ark. App. 545, 506 S.W.3d 292 (2016).

Cited: *Wingate-Mickles v. Harris*, 2016 Ark. App. 253 (2016).

28-50-105. Allowance of claims.**CASE NOTES**

Hearing.

Trial court's order requiring the executrix to pay the fees of an attorney for the former executrix violated subdivision (a)(3) of this section where the executrix

had timely objected to the amended claim, but no hearing was set or held. *Wingate-Mickles v. Harris*, 2016 Ark. App. 253 (2016).

28-50-112. Compromise of claims.**CASE NOTES****Best Interest of Estate.**

The question in this case is whether, as required by this section, the compromise of claims was in the best interest of the estate. Although certain issues raised by cross-appellant in opposition to the settlement of a claim were issues of first impression that had not been decided in Arkansas (e.g., whether a spouse's election to take against the will triggers a no-contest clause), that uncertainty supported the circuit court's finding that the settlement agreement was in the best interest of the estate. In addition, one of the personal representatives testified that he was carrying out the wishes of his deceased father and that paying the amount in a lump sum was more advantageous than paying it out over 15 years at 6% interest. *Ashley v. Ashley*, 2016 Ark. 161, 489 S.W.3d 660 (2016).

To the extent that an agreement settled

matters unrelated to the probate of the estate, those claims would not have required the circuit court's approval, and thus settlement of claims beyond the scope of probate would have had no bearing on whether the settlement of probate-related claims was in the best interest of the estate; in addition, cross-appellant did not demonstrate prejudice. *Ashley v. Ashley*, 2016 Ark. 161, 489 S.W.3d 660 (2016).

Findings that cross-appellant challenged as erroneous were not relevant to the question of whether the settlement agreement was in the best interest of the estate, and instead, the findings focused on his knowledge of the agreement; because the findings he complained of were not material to the circuit court's decision on whether the agreement was in the best interest of the estate, he could not demonstrate prejudice. *Ashley v. Ashley*, 2016 Ark. 161, 489 S.W.3d 660 (2016).

CHAPTER 51**TRANSFERS OF PROPERTY****SUBCHAPTER 1 — GENERAL PROVISIONS****28-51-103. Transfers pursuant to court orders.****CASE NOTES****Partition.**

Circuit court's refusal to hear a real estate agent's testimony was not error where information about the results of a judicial sale versus a private sale was already known to the court, there was

other evidence of the client's efforts to sell the property, and thus, the agent's testimony would have added little to the court's deliberations as to whether to order a public sale. *Howard v. Adams*, 2016 Ark. App. 222, 490 S.W.3d 678 (2016).

28-51-109. Validity of proceedings — Appeals.**CASE NOTES****Void Deed.**

Heir's failure to act in substantial compliance with the Probate Code required the court to hold that her disposition of the property was void; she was never appointed as administrator, the dece-

dent's will was never admitted or declared valid, and appellants never received notice of the collection of the small estate, and the administrator's deed was void. *Bryant v. Osborn*, 2014 Ark. 143 (2014).

SUBCHAPTER 3 — REAL PROPERTY INTERESTS

28-51-304. Sales at public auction.

CASE NOTES

Applicability.

Circuit court properly refused to apply this section to the judicial sale of property to satisfy an attorney-fee lien as the court

was the seller, not the personal representative of the decedent. *Howard v. Adams*, 2016 Ark. App. 597, 508 S.W.3d 890 (2016).

CHAPTER 52 ACCOUNTING

28-52-103. Filing of accounts.

CASE NOTES

Applicability.

Statute speaks in terms of the personal representative's duty to file accountings and possible sanctions for failing to do so, and the trustee was not acting as the personal representative when it filed its first accounting that was deemed improper; because the statute did not apply to this case, there was no authority for the probate court's award of attorney's fees to the heirs. *U.S. Trust v. First Nat'l Bank & Trust (In re Estate of Kemp)*, 2014 Ark. App. 160, 433 S.W.3d 911 (2014).

In an estate dispute where a sister sued her brother, who had held a power of attorney for the father, this section did not apply to the sister's argument concerning an accounting that the court had directed the brother to file. This section governs accountings filed during the probate of a decedent's estate but this case was not the probate of the father's estate; the probate court handling the estate was the proper forum for the proceeding on the accounting. *Ellis v. Thompson*, 2019 Ark. App. 579, 590 S.W.3d 774 (2019).

CHAPTER 53 DISTRIBUTION AND DISCHARGE

SUBCHAPTER 1 — GENERAL PROVISIONS

28-53-101. Determination of heirship.

CASE NOTES

ANALYSIS

Jurisdiction.
Standing.

Jurisdiction.

Probate court had jurisdiction to set aside its previous order determining heirship, because there was an extended period during which courts had jurisdiction to modify or vacate orders in probate pro-

ceedings, there had not been a final termination of the proceedings, and it was not entirely clear that the order determining heirship would have ended the proceedings. *McVesting, LLC v. Heirs of Macie McGoan*, 2012 Ark. App. 541 (2012).

Standing.

Probate court erred in finding that the limited liability company lacked standing to bring a petition for the determination of

heirship, because the limited liability company alleged in the petition that it was a legal entity, so it was a person and could bring the petition; “person” was de-

fined under § 28-1-102(18) to include a corporation, partnership, or other legal entity. *McVesting, LLC v. Heirs of Macie McGoon*, 2012 Ark. App. 541 (2012).

28-53-105. Order of final distribution — Conclusiveness.

CASE NOTES

Cited: *Arman v. Chi St. Vincent Hot Springs*, 2019 Ark. App. 187, 574 S.W.3d 731 (2019).

28-53-110. Improper distributions.

CASE NOTES

Jurisdiction.

Circuit court erred in concluding that it lacked subject matter jurisdiction over the claims that the executrix improperly distributed property in the administration of the decedent’s estate, as the clear lan-

guage of subsection (c) of this section clearly and unambiguously provided for jurisdiction of the circuit court. *Magness v. Graddy*, 2021 Ark. App. 119, 619 S.W.3d 878 (2021).

28-53-119. Reopening administration.

CASE NOTES

ANALYSIS

Applicability.

Petition to Reopen Administration.
Purposes of Reopening Estate.

Applicability.

This section, concerning reopening administration of an estate, did not apply where the estate had been dismissed for failure of the executrix to administer the estate, it was not settled, and the personal representative had not been discharged. *Dawson v. Dawson*, 2017 Ark. App. 584 (2017).

Petition to Reopen Administration.

That an amended petition to have a special administrator appointed and the related amended order were not filed under the original probate case docket number was not an outcome-determinative point when deciding whether the original probate case was reopened. Both the original case and the petition to reopen the case were filed in the same division—the probate division of the Garland County Circuit Court, and court clerks, not the

parties, assign case numbers. *Arman v. Chi St. Vincent Hot Springs*, 2019 Ark. App. 187, 574 S.W.3d 731 (2019).

Purposes of Reopening Estate.

Probate division of the circuit court had the authority under this section to appoint a special administrator for the limited purpose of pursuing unliquidated tort claims that were not addressed before the estate of the special administrator’s parent was closed. Although the circuit court did not use the word “reopen” in its order, its intent was clear enough because it found that the decedent’s estate was opened and closed without resolving wrongful death or survival claims and that a special administrator was necessary to pursue the claims. *Arman v. Chi St. Vincent Hot Springs*, 2019 Ark. App. 187, 574 S.W.3d 731 (2019).

Special administrator of a reopened probate case could file survival claims because the claims belonged to the decedent’s estate and had to be filed by the personal representative of the estate or a special administrator. The trustee that had served as the estate’s personal repre-

sentative did not have to file the claims. 2019 Ark. App. 187, 574 S.W.3d 731 Arman v. Chi St. Vincent Hot Springs, (2019).

SUBTITLE 5. FIDUCIARY RELATIONSHIPS

CHAPTER 65

GUARDIANS GENERALLY

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. APPOINTMENT.
3. POWERS AND DUTIES.
4. TERMINATION OF GUARDIANSHIP.
7. PUBLIC GUARDIAN FOR ADULTS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 28-65-101. Definitions.
 28-65-104. Incapacitated persons.
 28-65-106. Ward's Bill of Rights — Definition.

SECTION.

- 28-65-107. Jurisdiction of courts.
 28-65-110. [Repealed.]

28-65-101. Definitions.

As used in this chapter:

(1) "Essential requirements for health or safety" means the health care, food, shelter, clothing, and protection without which serious illness or serious physical injury will occur;

(2) "Evaluation" means a professional assessment of the abilities of the respondent and the impact of any impairments on the individual's capability to meet the essential requirements for his or her health or safety or to manage his or her estate;

(3) "Guardian" means one appointed by a court to have the care and custody of the person or of the estate, or of both, of an incapacitated person;

(4) "Guardian ad litem" means one appointed by a court in which a particular proceeding is pending to represent a ward or an unborn person in that proceeding;

(5)(A) "Incapacitated person" means a person who is impaired by reason of a disability such as mental illness, mental deficiency, physical illness, chronic use of drugs, or chronic intoxication, to the extent of lacking sufficient understanding or capacity to make or communicate decisions to meet the essential requirements for his or her health or safety or to manage his or her estate.

(B) "Incapacitated person" includes an endangered adult or impaired adult as defined in § 9-20-103, who is in the custody of the Department of Human Services.

(C) Nothing in this chapter shall be construed to mean a person is incapacitated for the sole reason he or she relies consistently on

treatment by spiritual means through prayer alone for healing in accordance with his or her religious tradition and is being furnished such treatment;

(6) “Least restrictive alternative” means the form of assistance that least interferes with the legal capacity of the respondent to act in his or her own behalf;

(7) “Limited guardian” means one whose powers and authority have been limited to the specific powers, authorities, and duties set forth in the order of appointment;

(8) “Professional” means a physician, licensed psychologist, or licensed certified social worker with training, experience, and knowledge of the particular alleged disability of the respondent;

(9) “Relative” means the spouse, child, grandchild, parent, grandparent, or sibling of a ward;

(10) “Temporary guardian” means a guardian appointed pursuant to § 28-65-218; and

(11) “Ward” means an incapacitated person for whom a guardian has been appointed.

History. Acts 1985, No. 940, § 2; A.S.A. 1947, § 57-821; Acts 2007, No. 121, § 1; 2011, No. 1027, § 1; 2017, No. 667, § 4.

Amendments. The 2017 amendment added the definition for “Relative”.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Matthew L. Brunson, Family Law—Providing for Those Who Cannot Provide for Themselves: A Proposal for the Arkansas General Assembly to Follow in the Footsteps of an Already Expansive Guardianship Law and Grant Guardians the Right to File for Divorce on Behalf of a Ward, 38 U. Ark. Little Rock L. Rev. 271 (2016).

Gabrielle Davis-Jones, Note: A New Guardian Angle: A Proposed Change to Arkansas’s Public Policy on Guardianship for Individuals with Intellectual Disabilities, 42 U. Ark. Little Rock L. Rev. 279 (2020).

CASE NOTES

ANALYSIS

Constitutionality.
Evaluation.
Professional.

Constitutionality.

On appeal of the order granting a permanent guardianship of appellant’s son to his grandmother, the Supreme Court of Arkansas did not address the merits of appellant’s constitutional challenge to the guardianship statutes, §§ 28-65-101 to 28-65-707, because the attorney general was not notified of the challenge as required by § 16-111-106(b) and there had

not been a complete adversarial development of the constitutional issues. *Mahavier v. Mahavier* (In re A.M.), 2012 Ark. 278 (2012).

Evaluation.

Failure to obtain a professional evaluation prior to a hearing on the appointment of a guardian was clearly erroneous; there was no oral testimony or a sworn written statement of a qualified professional. Without the required professional examination, there was insufficient evidence of the need for a guardian. *Autry v. Beckham*, 2014 Ark. App. 692, 450 S.W.3d 247 (2014).

Professional.

Trial court did not err in determining that an original guardianship order was simply voidable rather than void ab initio; while the original petition failed to meet the statutory requirements for obtaining a guardianship, such as those in subdivision

(8) of this section, the petition's deficiencies did not strip the court of jurisdiction over the parties or the subject matter. Baptist Health Med. Ctr. v. First Cmty. Bank of Batesville, 2017 Ark. App. 671, 537 S.W.3d 760 (2017).

28-65-104. Incapacitated persons.

For purposes of this chapter, the following persons are incapacitated persons:

- (1) Persons under age eighteen (18) whose disabilities have not been removed;
- (2) Persons who are detained or confined by a foreign power or who have disappeared; and
- (3) Persons under age twenty-one (21) who:
 - (A) Have reached eighteen (18) years of age;
 - (B) Have a current guardianship established based solely on the minority age of the person;
 - (C) Agree to allow the current guardianship to continue up to twenty-one (21) years of age; and
 - (D) Receive a guardianship subsidy paid for or approved by the Department of Human Services.

History. Acts 1985, No. 940, § 2; A.S.A. 1947, § 57-821; Acts 2013, No. 577, § 2.

CASE NOTES

Definition.

Minor child fell under the definition of an incapacitated person because she was

under the age of majority. Little v. Ark. Dep't of Human Servs., 2016 Ark. App. 362, 499 S.W.3d 233 (2016).

28-65-105. Purpose of guardianship.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Gabrielle Davis-Jones, Note: A New Guardian Angle: A Proposed Change to Arkansas's

Public Policy on Guardianship for Individuals with Intellectual Disabilities, 42 U. Ark. Little Rock L. Rev. 279 (2020).

CASE NOTES

ANALYSIS

Arbitration Agreement.
Sufficiency of Evidence.

Arbitration Agreement.

In light of the public policy favoring arbitration and the Legislature's decision to refrain from specifically limiting a

guardian's ability to enter into arbitration agreements, a guardian of a patient's person and the patient's estate possessed the authority to enter into an arbitration agreement with a nursing home on behalf of the patient; therefore, the nursing home's motion to compel arbitration should have been granted. *GGNSC Holdings, LLC v. Lamb*, 2016 Ark. 101, 487 S.W.3d 348 (2016).

of a guardian was clearly erroneous; there was no oral testimony or a sworn written statement of a qualified professional. Without the required professional examination, there was insufficient evidence of the need for a guardian. *Autry v. Beckham*, 2014 Ark. App. 692, 450 S.W.3d 247 (2014).

Sufficiency of Evidence.

Failure to obtain a professional evaluation prior to a hearing on the appointment

28-65-106. Ward's Bill of Rights — Definition.

(a)(1) This section is intended to create the "Ward's Bill of Rights" and to improve the process for emergency guardianships and other actions or processes related to guardianships in this state.

(2) As used in this section, "ward" means an adult for whom a guardian has been appointed.

(b) A copy of this section shall be:

(1) Served on a proposed ward over eighteen (18) years of age with the guardianship petition; and

(2) Provided to a ward upon request at any point during the guardianship or guardianship process.

(c) A ward retains all legal and civil rights except those which have been expressly limited by court order or those rights which have been specifically granted by court order to the guardian.

(d)(1) A ward has the right to appropriate communication and visitation with any person of the ward's choice.

(2) A guardian of the ward may limit or prohibit communication and visitation with the ward if the guardian:

(A) Determines it is necessary to limit or prohibit communication and visitation with the ward to protect the ward; and

(B) Complies with the following:

(i) The guardian shall express his or her concerns and any planned limitations or prohibitions on communication and visitation to the ward and, if appropriate, with the person whose communication and visitation with the ward will be limited or prohibited; and

(ii) If the guardian acts on limiting or prohibiting communication and visitation with the ward, the guardian shall:

(a) List the limitations or prohibitions and the reasons for the limitations or prohibitions in writing;

(b) Deliver the information described under subdivision (d)(2)(B)(ii)(a) of this section personally to the ward;

(c) Deliver the information described under subdivision (d)(2)(B)(ii)(a) of this section by reasonable means to the person whose communication and visitation with the ward will be limited or prohibited; and

(d)(1) In addition to the information described under subdivision (d)(2)(B)(ii)(a) of this section, deliver to the ward and the person whose communication and visitation with the ward will be limited or prohibited written notice that the ward and the person whose communication and visitation with the ward will be limited or prohibited may petition the court immediately to remove the limitations and prohibitions imposed by the guardian.

(2) The ward or person whose communication and visitation with the ward will be limited or prohibited may request a hearing on his or her petition to remove the limitations or prohibitions imposed by the guardian.

(3) Upon the request of the ward, the guardian shall assist the ward in seeking and scheduling a hearing on his or her petition to remove the limitations and prohibitions imposed by the guardian.

(3) If a ward is unable to give express consent to communication, visitation, or interaction with a person due to a physical or mental condition, then the consent of the ward may be presumed by a guardian or the court based on the ward's prior relationship with the person seeking communication, visitation, or interaction with the ward.

(e) A ward has the right to:

(1) A copy of the paperwork associated with the guardianship, including without limitation all pleadings and court orders;

(2) A guardianship that encourages the development or maintenance of the independence of the ward with, if possible, the eventual goal of terminating the guardianship;

(3) Consideration of the ward's current and previously stated personal preferences, desires, medical and psychiatric treatment preferences, religious beliefs, living arrangements, and other preferences and opinions;

(4) Exercise full control of all aspects of the ward's life not specifically granted by the court to the guardian; and

(5) Receive a copy of all rights, pleadings, notices, and court orders in the native language of the ward and in a manner accessible to the ward relative to his or her abilities.

(f) A guardian shall consult properly with the ward concerning significant financial and lifestyle decisions affecting the ward.

(g) A ward or guardian may request at any time a hearing before the court on any particular areas of concern.

(h) This section does not replace or repeal other remedies otherwise available to a ward under the law.

History. Acts 1985, No. 940, § 2; A.S.A. 1947, § 57-821; Acts 2017, No. 667, § 3; 2021, No. 516, § 1.

Amendments. The 2017 amendment designated the former section as (a); substituted "A ward" for "An incapacitated

person for whom a guardian has been appointed" in (a); and added (b).

The 2021 amendment substituted "Ward's Bill of Rights" for "Rights of incapacitated persons" in the section heading; and rewrote the section.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Matthew L. Brunson, *Family Law—Providing for Those Who Cannot Provide for Themselves: A Proposal for the Arkansas General Assembly to Follow in the Footsteps of an Already Expansive Guardianship Law and Grant Guardians the Right to File for Divorce on Behalf of a Ward*, 38 U. Ark. Little Rock L. Rev. 271 (2016).

Gabrielle Davis-Jones, *Note: A New Guardian Angle: A Proposed Change to Arkansas's Public Policy on Guardianship for Individuals with Intellectual Disabilities*, 42 U. Ark. Little Rock L. Rev. 279 (2020).

28-65-107. Jurisdiction of courts.

(a) The jurisdiction of the circuit court over all matters of guardianship, other than guardianships *ad litem* in other courts, shall be exclusive, subject to the right of appeal.

(b) The provisions of this chapter shall not affect the jurisdiction of any court authorized to remove disabilities of minority.

(c)(1) If a juvenile is the subject matter of an open case filed under the Arkansas Juvenile Code of 1989, § 9-27-301 *et seq.*, the guardianship petition shall be filed in that case if the juvenile resides in Arkansas.

(2) If the juvenile resides out of state through the Interstate Compact on the Placement of Children, § 9-29-201 *et seq.*, the guardianship petition may be filed in Arkansas or it may be filed in the state in which the juvenile resides, subject to approval by the receiving state.

(3) The Department of Human Services may intervene as a matter of right in a guardianship action at any time before the entry of a permanent guardianship order if:

(A) A guardianship action is initiated for a child or adult in the custody of the department, including a seventy-two-hour hold; and

(B) The custody of the child or adult is granted to a party seeking guardianship.

(d) The appropriate jurisdiction for an adult guardianship action, excluding proceedings under the Adult Maltreatment Custody Act, § 9-20-101 *et seq.*, under this chapter that involve a party residing outside the state shall be determined under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, § 28-74-101 *et seq.*

(e) The appropriate jurisdiction for an adult guardianship action under the Adult Maltreatment Custody Act, § 9-20-101 *et seq.*, that involves a maltreated adult residing outside the state shall be determined under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, § 28-74-101 *et seq.*

History. Acts 1985, No. 940, § 5; A.S.A. 2003, No. 1185, § 279; 2009, No. 301, § 1; 1947, § 57-824; Acts 2001, No. 1029, § 2; 2011, No. 159, § 3; 2013, No. 577, § 3.

CASE NOTES

Intervention.

Circuit court did not err in allowing two family members to become parties to a dependency-neglect case without first finding that they had met the requirements of Ark. R. Civ. P. 24 given the

mandatory nature of subdivision (c)(1) of this section and that no authority required an intervention before a person could pursue a petition for guardianship. *Peeler v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 534 (2016).

28-65-110. [Repealed.]

Publisher's Notes. This section, concerning the rights of relatives, was repealed by Acts 2021, No. 516, § 2, effective

July 28, 2021. The section was derived from Acts 2017, No. 667, § 5.

SUBCHAPTER 2 — APPOINTMENT

SECTION.

28-65-203. Qualifications of guardian.

28-65-212. Evaluations.

28-65-213. Rights of wards and proposed wards.

SECTION.

28-65-218. Emergency and temporary guardianships.

28-65-222. Parental appointment of temporary guardian.

28-65-203. Qualifications of guardian.

(a)(1) A natural person is qualified to be appointed guardian of the person and of the estate of an incapacitated person if he or she is:

(A) A resident of this state;

(B) At least eighteen (18) years of age;

(C) Of sound mind; and

(D) Subject to the limitations in subdivision (a)(2) of this section, either:

(i) Not a convicted and unpardoned felon; or

(ii) A convicted and unpardoned felon who has disclosed his or her prior felony conviction and for whom the court has entered written findings stating that, notwithstanding the felony conviction, he or she is otherwise qualified after reviewing a certified copy of the sentencing order.

(2) Subject to the requirements in subdivision (a)(1) of this section, a convicted and unpardoned felon may:

(A) Be the guardian of the person for an adult;

(B) Be the guardian of the person for a minor who is not subject to a dependency-neglect proceeding under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., if the convicted and unpardoned felon is a relative or fictive kin as defined in § 9-28-402;

(C) Be the guardian of the person for a minor who is subject to a dependency-neglect proceeding under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., if the convicted and unpardoned felon qualifies for guardianship under subsection (b) of this section; and

(D) Not be the guardian of the estate for any person.

(3) If a convicted and unpardoned felon fails to file a report or accounting required under this subchapter or by the court, the court

shall set a hearing for the convicted and unpardoned felon to show cause as to why the guardianship should not be terminated.

(b) However, notwithstanding subsection (a) of this section, a natural person who is a resident of this state, eighteen (18) years of age or older, of sound mind, and a convicted and unpardoned felon whose home has been opened under § 9-28-409 either as a foster home or as an adoptive home is qualified to be a guardian of the person or estate of a minor in the custody of the Department of Human Services.

(c) Any charitable organization or humane society incorporated under the laws of this state is qualified for appointment as guardian of the person and estate of a minor:

(1) When the major portion of the support of the minor is being supplied or administered by the organization;

(2) When the court finds that:

(A) The minor has been abandoned by his or her parents; or

(B) The minor's parents are incapacitated or unfit for the duties of guardianship; or

(3) If no other suitable person can be found who is able and willing to assume the duties of guardianship.

(d)(1) A parent under eighteen (18) years of age is qualified for appointment as guardian of the person of his or her child.

(2) If the department consents, the department is qualified for appointment as guardian of the estate of a minor when the minor is in the custody of the department.

(e)(1) A corporation authorized to do business in this state and properly empowered by its charter to become guardian is qualified to serve as guardian of the estate of an incapacitated person.

(2) A bank or similar institution with trust powers may be appointed guardian of the estate of an incapacitated person.

(f)(1) A nonresident natural person possessing the qualifications enumerated in this section, except as to residence, who has appointed a resident agent to accept service of process in any action or suit with respect to the guardianship and has caused the appointment to be filed with the court, whether or not he or she has been nominated by the will of the last surviving parent of a minor resident of this state to be appointed as guardian of the minor, is qualified for the appointment.

(2) However, unless nominated by will, bond may not be dispensed with.

(g) A person whom the court finds to be unsuitable to perform the duties incident to the appointment shall not be appointed guardian of the person or estate of an incapacitated person.

(h) A sheriff, probate clerk of a circuit court, or deputy of either, or a circuit judge, shall not be appointed guardian of the person or estate of an incapacitated person unless the incapacitated person is related to him or her within the third degree of consanguinity.

(i)(1) Except as provided in subdivision (i)(4) of this section, a public agency or employee of any public agency acting in his or her official capacity shall not be appointed as guardian for any incapacitated person.

(2) An employee of a public agency that provides direct services to the incapacitated person shall not be appointed guardian of the person or estate of the incapacitated person.

(3) An employee of a public agency that provides direct services to the incapacitated person shall not be appointed as a temporary guardian.

(4) Notwithstanding any other provision of law, the Public Guardian for Adults may serve as guardian of the person or the estate, or both, of an incapacitated person receiving services from any public agency.

(5) The department shall promulgate rules to implement this provision.

(j) A person may be appointed temporary guardian of an incapacitated person notwithstanding the provisions of subsection (h) or subsection (k) of this section if he or she is related to the incapacitated person within the third degree of consanguinity and the court determines that any potential conflict of interest is unsubstantial and that the appointment is in the best interest of the ward.

(k) A circuit court of this state shall not appoint a person or institution as the permanent custodian or permanent guardian of the person or estate of an adult in the custody of the department unless:

(1) The department has evaluated the prospective guardian under the department's authority under § 9-20-122 and promulgated department policy; or

(2) The department has evaluated the prospective custodian under the department's authority under § 9-20-122 and promulgated department policy.

(l)(1) A circuit court of this state shall not appoint an unrelated person, a related person that is not related within the fifth degree of consanguinity, or an institution as a permanent custodian or permanent guardian of the person or estate of an adopted juvenile unless at least twenty (20) days before the hearing the prospective guardian files a written home study that has been conducted by a licensed certified social worker.

(2)(A) The home study shall include a state-of-residence criminal background check, if available, and a national fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation on the prospective guardian and all household members eighteen (18) years of age and older.

(B) If a prospective guardian has lived in another state for at least six (6) years immediately prior to guardianship, then only a state-of-residence criminal background check is required.

(C) The home study shall address whether the home is a suitable home and shall include a recommendation as to the approval of the petitioner as a guardian.

(D) The home study shall contain an evaluation of the guardian with a recommendation as to the granting of the petition for guardianship and any other information the court requires regarding the petitioner or the person.

- (m) The department shall not be ordered by any court to conduct a guardianship home study unless:
- (1) The court has first determined the responsible party to be indigent; and
 - (2) The person to be studied lives in the State of Arkansas.

History. Acts 1985, No. 940, § 8; A.S.A. 2013, No. 1137, § 2; 2015, No. 1018, § 4; 1947, § 57-827; Acts 1993, No. 416, § 1; 2019, No. 833, § 1.

2003, No. 1185, § 280; 2007, No. 862, § 3; **Amendments.** The 2019 amendment

2009, No. 301, § 2; 2011, No. 1027, § 2; rewrote (a).

CASE NOTES

ANALYSIS

Constitutionality of Legislation.
Requirements for Appointment.

Constitutionality of Legislation.

Circuit court properly appointed a permanent guardian of a child and deemed the statute providing for such appointment constitutional because guardianship proceedings were “special proceedings” and excepted from the traditional Rules of Civil Procedure. *Swenson v. Kane*, 2014 Ark. 444, 447 S.W.3d 118 (2014).

Requirements for Appointment.

Notwithstanding the contentions of a child’s grandparents that appellee failed

to establish that she was qualified or suitable to act as the child’s guardian, the appellate court concluded there was ample evidence before the circuit court that appellee was qualified and suitable to serve as guardian. The circuit court’s finding that appellee would be the better person to parent the child was supported, and the appellate court was not left with a definite and firm conviction that a mistake had been made. *Brewer v. Bair-Massey* (In re A.B.), 2018 Ark. App. 529, 562 S.W.3d 891 (2018).

28-65-204. Preferences.

CASE NOTES

ANALYSIS

Best Interest of Ward.
Change of Custody.
Intervention.
Parents.
Relatives Other Than Parent.
Standing.

Best Interest of Ward.

Aunt was properly appointed as the guardian of two children under § 28-65-210 where it was in the best interest of the children in order to protect them from the effects of their mother’s abusive relationship, and the aunt was qualified and suitable to act as the guardian. Even though the mother had ended the relationship and completed classes and counseling, the natural-parent preference was merely one facet of the case, and the mother was

unable to provide for the emotional needs of the children. *Gantt v. Ark. Dep’t of Human Servs.*, 2013 Ark. App. 217 (2013).

Trial court did not err in finding that a ward’s daughter was not a suitable guardian under subsection (b) of this section because, although they might have been close at one time, the ward was no longer close to the daughter and accused her of “playing games;” the ward was angry that the daughter did not attend her husband’s funeral and that she was forced to return to Florida against her wishes. *Johnson v. Mitchell*, 2013 Ark. App. 498 (2013).

There was evidence to support the appointment of a guardian because it was not in the best interest of the child to be returned to a home where she did not feel safe; the mother disbelieved that the child had been sexually abused and chose her relationship with her boyfriend over her

relationship with the child. *Sherland v. Sherland*, 2015 Ark. App. 342, 465 S.W.3d 3 (2015).

Notwithstanding the contentions of a child's grandparents that appellee failed to establish that she was qualified or suitable to act as the child's guardian, the appellate court concluded there was ample evidence before the circuit court that appellee was qualified and suitable to serve as guardian. The circuit court's finding that appellee would be the better person to parent the child was supported, and the appellate court was not left with a definite and firm conviction that a mistake had been made. *Brewer v. Bair-Massey (In re A.B.)*, 2018 Ark. App. 529, 562 S.W.3d 891 (2018).

Change of Custody.

Circuit court did not err when it failed to terminate the guardianship of a child by the child's paternal aunt and uncle and to establish the child's maternal grandparent as the guardian of the child because the court considered the testimony of the status of the child's circumstances and made a determination regarding the child's best interest. *Smith v. Lovelace*, 2014 Ark. App. 345 (2014).

Intervention.

Permissive intervention under Ark. R. Civ. P. 24(b) in a guardianship proceeding was properly denied as the mother's appointment as guardian tracked subdivision (b)(4) of this section and was consistent with subsection (c) of this section, and the incapacitated person's former employer was not a former caretaker, had never been the guardian, and had never maintained a health proxy for the incapacitated person. *Kennedy v. McDaniel*, 2020 Ark. App. 311, 603 S.W.3d 551 (2020).

Parents.

Paternal grandmother was not appointed the guardian of her grandchild because the mother was preferred under subsection (a) of this section, and a trial court did not find that the mother was unfit; evidence regarding the mother's shortcomings was largely controverted, and the trial court considered allegations that the mother had been deceptive to healthcare providers. Even though the mother's sexual relationships could have had a significant effect on the children in

the household, the mother was married at the time of a final hearing. *Marcellus v. Mays*, 2012 Ark. App. 304, 419 S.W.3d 730 (2012).

In awarding permanent guardianship of a child to her paternal grandfather and step-grandmother, a court specifically addressed the suitability of the natural parents to be guardians over the child pursuant to subsection (a) of this section; an impediment to the mother being considered a qualified and suitable guardian was her relationship with the child's father. *Wilson v. Wilson*, 2013 Ark. App. 759, 431 S.W.3d 369 (2013).

In appointing a guardian, a trial court did not err by failing to consider a mother's fitness as a parent under the current interpretation of Arkansas guardianship laws. Even assuming that a finding on fitness was required, the evidence would have supported a finding that the mother was unfit based on her disbelief that her child had been sexually abused. *Sherland v. Sherland*, 2015 Ark. App. 342, 465 S.W.3d 3 (2015).

Relatives Other Than Parent.

Subsection (a) of this section, the natural parent preference statute, did not require a grandmother seeking custody of her grandchildren to prove that the children's natural mother was an unfit mother. The best interest of the children was served by placement with their grandmother, given evidence that the children were dirty, flea-bitten, and injured when they returned from their mother's home. *Furr v. James*, 2013 Ark. App. 181, 427 S.W.3d 94 (2013).

Despite the statutory preference for a parent, a grandparent was appointed as a guardian since the trial court was not satisfied that the mother was suitable; the trial court noted the mother's "voiced skepticism" with respect to allegations of sexual abuse in clear contradiction of the child's counselor, her continued significant social contact with the alleged perpetrator, and a lack of stability in the mother's life and home. *Sherland v. Sherland*, 2015 Ark. App. 342, 465 S.W.3d 3 (2015).

Circuit court properly awarded the grandmother's petition for guardianship because the grandmother was not required to prove that the mother was unfit; there was a mountain of evidence presented in the case to demonstrate that the

mother was unsuitable, and the circuit court found that the mother poisoned the minds of the children and and coached them to make untrue statements. *Mossholder v. Coker*, 2017 Ark. App. 279, 521 S.W.3d 150 (2017).

Standing.

Mother lacked standing to challenge the guardianship petition based on the failure to serve the biological father or find him unfit. *Reagan v. Dodson*, 2016 Ark. App. 598, 509 S.W.3d 654 (2016).

28-65-205. Petition.

Where former employer’s motion to intervene in a guardianship proceeding was denied, he was considered a nonparty and accordingly lacked standing to challenge the appointment of the mother as guardian of the 35-year-old daughter. *Kennedy v. McDaniel*, 2020 Ark. App. 311, 603 S.W.3d 551 (2020).

Cited: *Troeskyn v. Herrington* (In re S.H.), 2012 Ark. 245, 409 S.W.3d 307 (2012).

CASE NOTES

ANALYSIS

Proper Party.
Standing.

Proper Party.

Child was in the Department of Human Services’ custody pursuant to a court order, and the department filed a petition to appoint the father as guardian; the mother made no persuasive argument that the department was not a proper party to petition for guardianship. *Kantor v. Ark. Dep’t of Human Servs.*, 2018 Ark. App. 402, 559 S.W.3d 747 (2018).

Former employer’s Ark. R. Civ. P. 24(a)(1) motion to intervene in a guardianship proceeding was properly denied where the guardianship statute he relied on is discretionary, and thus it did not confer an unconditional right to intervene. *Kennedy v. McDaniel*, 2020 Ark. App. 311, 603 S.W.3d 551 (2020).

Standing.

Because the mother was aggrieved by the order, which denied her petition for guardianship, she had standing. *Kantor v. Ark. Dep’t of Human Servs.*, 2018 Ark. App. 402, 559 S.W.3d 747 (2018).

28-65-207. Notice of hearing for appointment.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Gabrielle Davis-Jones, Note: A New Guardian Angle: A Proposed Change to Arkansas’s

Public Policy on Guardianship for Individuals with Intellectual Disabilities, 42 U. Ark. Little Rock L. Rev. 279 (2020).

CASE NOTES

ANALYSIS

Standing.
Waiver of Notice.

Standing.

Mother lacked standing to challenge the guardianship petition based on the failure to serve the biological father or find him unfit. *Reagan v. Dodson*, 2016 Ark. App. 598, 509 S.W.3d 654 (2016).

Waiver of Notice.

Circuit court did not clearly err when it found that appellant’s waiver of notice as written applied to “all proceedings” and that appellant did not intend it to be limited to only proceedings that involved the appointment of his parents as guardians to his children, as opposed to other persons; although appellant could have limited under the statute his waiver to waive notice only of specific hearings, he

failed to do so. *Paschall v. Paschall*, 2018 Ark. App. 514, 563 S.W.3d 592 (2018).

28-65-209. Request for special notice of hearings.

CASE NOTES

Request Not Made.

Circuit court did not clearly err when it found that appellant’s waiver of notice as written applied to “all proceedings” and that appellant did not intend it to be limited to only proceedings that involved the appointment of his parents as guard-

ians to his children, as opposed to other persons; although appellant could have limited under the statute his waiver to waive notice only of specific hearings, he failed to do so. *Paschall v. Paschall*, 2018 Ark. App. 514, 563 S.W.3d 592 (2018).

28-65-210. Proof required for appointment of guardian.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Gabrielle Davis-Jones, Note: A New Guardian Angle: A Proposed Change to Arkansas’s

Public Policy on Guardianship for Individuals with Intellectual Disabilities, 42 *U. Ark. Little Rock L. Rev.* 279 (2020).

CASE NOTES

ANALYSIS

In General.
Evidence.
Grandparent.

In General.

Circuit court did not err when it failed to terminate the guardianship of a child by the child’s paternal aunt and uncle and to establish the child’s maternal grandparent as the guardian of the child because the court considered the testimony of the status of the child’s circumstances and made a determination regarding the child’s best interest. *Smith v. Lovelace*, 2014 Ark. App. 345 (2014).

Evidence.

Aunt was properly appointed as the guardian of two children under this section where it was in the best interest of the children in order to protect them from the effects of their mother’s abusive relationship, and the aunt was qualified and suitable to act as the guardian. Even though the mother had ended the relationship and completed classes and counseling, the natural-parent preference was merely one facet of the case, and the mother was unable to provide for the

emotional needs of the children. *Gantt v. Ark. Dep’t of Human Servs.*, 2013 Ark. App. 217 (2013).

Evidence showed a long-standing and positive relationship between the child and the couple, who had spent quality time with the child for years, and a strong bond existed between them; the mother took little action to establish her fitness to parent the child, the circuit court’s best-interest finding was not clearly erroneous, and the three statutory requirements for guardianship had been met in this case. *Little v. Ark. Dep’t of Human Servs.*, 2016 Ark. App. 362, 499 S.W.3d 233 (2016).

Notwithstanding the contentions of a child’s grandparents that appellee failed to establish that she was qualified or suitable to act as the child’s guardian, the appellate court concluded there was ample evidence before the circuit court that appellee was qualified and suitable to serve as guardian. The circuit court’s finding that appellee would be the better person to parent the child was supported, and the appellate court was not left with a definite and firm conviction that a mistake had been made. *Brewer v. Bair-Massey (In re A.B.)*, 2018 Ark. App. 529, 562 S.W.3d 891 (2018).

Grandparent.

Circuit court properly awarded the grandmother's petition for guardianship because it did not clearly err in finding that the grandmother was a suitable guardian; the circuit court's findings that the father did not abuse his children and that the mother coached the children to say he did were not clearly erroneous because all of the investigations of the alleged abuse established that the mother's allegations were unsubstantiated. *Mossholder v. Coker*, 2017 Ark. App. 279, 521 S.W.3d 150 (2017).

Circuit court properly awarded the

grandmother's petition for guardianship because the grandmother was not required to prove that the mother was unfit; there was a large mountain of evidence presented in the case to demonstrate that the mother was unsuitable, and the circuit court found that the mother poisoned the minds of the children and coached them to make untrue statements. *Mossholder v. Coker*, 2017 Ark. App. 279, 521 S.W.3d 150 (2017).

Cited: *Troeskyn v. Herrington* (In re S.H.), 2012 Ark. 245, 409 S.W.3d 307 (2012).

28-65-211. Determination of incapacity — Evidence required.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. Gabrielle Davis-Jones, Note: A New Guardian Angle: A Proposed Change to Arkansas's

Public Policy on Guardianship for Individuals with Intellectual Disabilities, 42 U. Ark. Little Rock L. Rev. 279 (2020).

CASE NOTES**ANALYSIS**

Examination by Medical Witness.

Invited Error.

Order of Incapacity.

Sworn Written Statement.

Examination by Medical Witness.

Failure to obtain a professional evaluation prior to a hearing on the appointment of a guardian was clearly erroneous; there was no oral testimony or a sworn written statement of a qualified professional. Without the required professional examination, there was insufficient evidence of the need for a guardian. *Autry v. Beckham*, 2014 Ark. App. 692, 450 S.W.3d 247 (2014).

Long-term care facility is defined in § 20-10-101 as a nursing home, residential care facility, assisted living facility, post-acute head injury retraining and residential care facility, or any other facility which provides long-term medical or personal care. Given this statutory definition, the Supreme Court of Arkansas held that, for the purposes of subdivision (b)(2) of this section, a long-term care facility was not an institution for the treatment of mental or nervous diseases. *Hale v. Coffman*, 2016 Ark. 36, 480 S.W.3d 861 (2016).

In dismissing a daughter's petition for guardianship over her 84-year-old father, the circuit court erred when it concluded that the daughter was required to present oral testimony or a sworn written statement of a qualified professional who was a member of the medical staff of the long-term care facility where the father was a resident; the facility did not fall within subdivision (b)(2) of this section. *Hale v. Coffman*, 2016 Ark. 36, 480 S.W.3d 861 (2016).

Invited Error.

Pursuant to the invited-error doctrine, a guardian was precluded from arguing that a guardianship was void because it was the guardian who requested the guardianship and who failed to obtain the requisite professional evaluation; the guardian defended the validity of the guardianship when trustees attempted to have it set aside. *Rogers v. Ritchie*, 2017 Ark. App. 420, 528 S.W.3d 272 (2017).

Order of Incapacity.

Order failed to reflect that the daughter's incapacity had been established by the evidence required in this section. *Hinton v. Bethany Christian Servs.*, 2015 Ark. App. 301, 462 S.W.3d 361 (2015).

Sworn Written Statement.

Extensive documentation regarding the child found in the service plan arguably qualified as an evaluation, but the service plan was not a sworn written statement and did not set out the doctor's qualifications; section 28-65-212(a)(2) requires that the evaluation be performed by a

professional with expertise appropriate for the respondent's alleged incapacity, and a doctor's authorization for treatment is not a sworn written statement; therefore, the case was reversed and remanded. *Kantor v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 402, 559 S.W.3d 747 (2018).

28-65-212. Evaluations.

(a)(1) A professional evaluation shall be performed prior to the court hearing on any petition for guardianship except when appointment is being made because of minority, disappearance, detention, or confinement by a foreign power or pursuant to § 28-65-218.

(2) The evaluation shall be performed by a professional or professionals with expertise appropriate for the respondent's alleged incapacity.

(b) The evaluation shall include the following:

(1) The respondent's medical and physical condition;

(2) His or her adaptive behavior;

(3) His or her intellectual functioning; and

(4) Recommendation as to the specific areas for which assistance is needed and the least restrictive alternatives available.

(c)(1) If no professional evaluations performed within the last six (6) months are available, the court will order an independent evaluation.

(2) If the petition is granted, the cost of the independent evaluation will be borne by the estate of the incapacitated person. In the event the petition is denied, the costs will be borne by the petitioner.

(d)(1) The Department of Human Services shall not be ordered by any court, except the juvenile division of the circuit court, to gather records, investigate the respondent's condition, or help arrange for appropriate professional evaluations, unless the court has first determined all parties to the proceeding to be indigent and assistance provided by the department is limited to actions within the State of Arkansas.

(2) The department shall issue rules to implement this provision.

(e) Any existing evaluations made by the department of which the court has notice must be considered by the court.

History. Acts 1985, No. 940, § 16; A.S.A. 1947, § 57-835; Acts 1987, No. 812, § 1; 2003, No. 368, § 1; 2019, No. 315, § 3202.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (d)(2).

CASE NOTES

ANALYSIS

Evidence.

Independent Medical Evaluation.

Invited Error.

Preservation for Review.

Statutory Requirements.

Sworn Written Statement.

Evidence.

Failure to obtain a professional evaluation prior to a hearing on the appointment of a guardian was clearly erroneous; there was no oral testimony or a sworn written statement of a qualified professional. Without the required professional examination, there was insufficient evidence of the need for a guardian. *Autry v. Beckham*, 2014 Ark. App. 692, 450 S.W.3d 247 (2014).

Independent Medical Evaluation.

Circuit court had statutory authority under this section to order an independent medical evaluation of the subject of the guardianship petition; moreover, the appellate argument was waived as the order had been voluntarily complied with. *Howard v. Jenkins*, 2019 Ark. App. 15, 568 S.W.3d 771 (2019).

Invited Error.

Pursuant to the invited-error doctrine, a guardian was precluded from arguing that a guardianship was void because it was the guardian who requested the guardianship and who failed to obtain the requisite professional evaluation; the guardian defended the validity of the guardianship when trustees attempted to have it set aside. *Rogers v. Ritchie*, 2017 Ark. App. 420, 528 S.W.3d 272 (2017).

Preservation for Review.

In a guardianship case, an appellate court was able to review whether a circuit court erred by failing to obtain a professional evaluation prior to hearing, even though the argument was not raised be-

low; moreover, the sufficiency of the evidence in a bench trial could have been raised whether or not an objection was made below. *Autry v. Beckham*, 2014 Ark. App. 692, 450 S.W.3d 247 (2014).

Whether petitioner for guardianship over her mother had fully complied with the statutory requirements concerning the professional evaluation was not a jurisdictional issue; therefore, because the mother had failed to raise the issue or obtain a ruling, the appellate court did not address the issue in her interlocutory appeal. *Howard v. Jenkins*, 2019 Ark. App. 15, 568 S.W.3d 771 (2019).

Statutory Requirements.

Award of final guardianship of the adult appellant to his mother and her husband was inappropriate, where a physician's affidavit attached to the emergency petition established, at best, appellant's medical and physical condition, adaptive behavior, and intellectual functioning, but did not contain any recommendation as to the specific areas for which assistance was needed and the least restrictive alternatives available as required by subdivision (b)(4) of this section. *Helton v. Stogsdill* (In re Helton), 2020 Ark. App. 132, 594 S.W.3d 903 (2020).

Sworn Written Statement.

Extensive documentation regarding the child found in the service plan arguably qualified as an evaluation, but the service plan was not a sworn written statement, as required by § 28-65-211 and did not set out the doctor's qualifications; subdivision (a)(2) of this section requires that the evaluation be performed by a professional with expertise appropriate for the respondent's alleged incapacity, and a doctor's authorization for treatment is not a sworn written statement; therefore, the case was reversed and remanded. *Kantor v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 402, 559 S.W.3d 747 (2018).

28-65-213. Rights of wards and proposed wards.

(a) At the hearing, the respondent ward or proposed ward shall have the right to:

(1) Be represented by counsel;

(2) Present evidence on his or her own behalf;

(3) Cross-examine adverse witnesses;

(4)(A) Be present.

(B)(i) The petitioner or person with physical custody of the respondent ward or proposed ward shall make reasonable efforts to ensure that the respondent ward or proposed ward is present or otherwise able to participate electronically for all hearings.

(ii) If the respondent ward or proposed ward is not present at a hearing, the court shall:

(a) Inquire first as to the reasons for the absence of the respondent ward or proposed ward; and

(b) Proceed after being satisfied that it is not safe, appropriate, or possible for the respondent ward or proposed ward to be present or otherwise participate; and

(5) Require the attendance by subpoena of one (1) or more of the professionals who prepared the evaluation.

(b) The burden of proof by clear and convincing evidence is upon the petitioner, and a determination of incapacity shall be made before consideration of a proper disposition.”

(c)(1) If the respondent ward or proposed ward is found to be incapacitated, the court shall determine the extent of the incapacity and the feasibility of less restrictive alternatives to guardianship to meet the needs of the respondent.

(2) If it is found that alternatives to guardianship are feasible and adequate to meet the needs of the respondent ward or proposed ward, the court may dismiss the action.

(3) If it is found that the respondent ward or proposed ward is substantially without capacity to care for himself or herself or his or her estate, a guardian for the person or estate, or both shall be appointed.

History. Acts 1985, No. 940, § 16; A.S.A. 1947, § 57-835; Acts 2021, No. 516, § 3.

Amendments. The 2021 amendment substituted “Rights of wards and proposed wards” for “Hearing – Effect of determinations” in the section heading; inserted

“ward or proposed ward” in the introductory language of (a); deleted former (a)(4); redesignated (a)(5) as (a)(4)(A); added (a)(4)(B); redesignated (a)(6) as (a)(5); and inserted “ward or proposed ward” in (c)(1), (c)(2), and (c)(3).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Gabrielle Davis-Jones, Note: A New Guardian Angle: A Proposed Change to Arkansas’s

Public Policy on Guardianship for Individuals with Intellectual Disabilities, 42 U. Ark. Little Rock L. Rev. 279 (2020).

28-65-214. Guardianship order.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Gabrielle Davis-Jones, Note: A New Guardian Angle: A Proposed Change to Arkansas’s

Public Policy on Guardianship for Individuals with Intellectual Disabilities, 42 U. Ark. Little Rock L. Rev. 279 (2020).

CASE NOTES

Temporary Guardianship.

Guardianship order stated that it was temporary in nature, and the mother’s claim that the word “temporary” was a typographical error was rejected; denominating a guardianship as temporary, rather than permanent, is certainly more

in the nature of an exercise of judicial discretion than it is a mere mistake, and the circuit court did not err in finding that the mother was only a temporary guardian. *Hinton v. Bethany Christian Servs.*, 2015 Ark. App. 301, 462 S.W.3d 361 (2015).

28-65-216. Issuance of letters.

CASE NOTES

ANALYSIS

Applicability.
Voidable Petition.

Applicability.

Because letters of guardianship were issued to the stepmother and had not been revoked or canceled by the circuit court at the time of the insurer’s disbursement of the minor daughter’s portion of her father’s life insurance proceeds to her stepmother as guardian, the insurer was protected by subsection (b) of this section. Therefore, summary judgment in favor of the insurer was proper. *Locke v. Sinclair*,

2019 Ark. App. 329, 578 S.W.3d 736 (2019).

Voidable Petition.

Hospital challenging a guardianship was not entitled to vacate the original guardianship order because the amended guardianship petition sufficiently addressed the shortcomings of the original petition, and the bank, which had been appointed guardian, relied on the previous guardianship order in prosecuting the underlying medical-negligence claim on the ward’s behalf. *Baptist Health Med. Ctr. v. First Cmty. Bank of Batesville*, 2017 Ark. App. 671, 537 S.W.3d 760 (2017).

28-65-218. Emergency and temporary guardianships.

(a)(1)(A) If upon presentation of an emergency ex parte motion accompanied by an affidavit or verified petition giving rise to specific facts in appropriate detail the court finds that there is imminent danger to the life or health of an incapacitated person or of loss, damage, or waste to the property of an incapacitated person and that this requires the immediate appointment of a guardian of his or her person or estate, or both, the court shall issue an order appointing an emergency temporary guardian.

(B) An ex parte emergency guardianship order shall include a date and time certain, not to exceed fourteen (14) days from the date on which the order is entered, for a hearing reviewing the allegations in the emergency ex parte motion.

(C) If the court finds clear and convincing evidence that a temporary guardianship is necessary and appropriate to protect the ward or the property of the ward after the hearing required under subdivision (a)(1)(B) of this section or after a written agreement or agreement in court by the necessary parties, the court may enter an order granting temporary guardianship for a period of up to ninety (90) days from the date of the emergency hearing.

(2)(A) If the incapacitated person is an adult, the period for the appointment of a temporary guardian shall not exceed ninety (90) days.

(B) If the incapacitated person is a minor, on or before the expiration of the ninety-day period and after a hearing on the merits or an agreement by the necessary parties, the court may extend the temporary guardianship for up to an additional one hundred eighty (180) days.

(3) Notice of the emergency hearing shall be given before the hearing as required by subsections (b)-(d) of this section. However, notice is not required with respect to a person whose whereabouts are unknown or cannot by the exercise of reasonable diligence be ascertained.

(b) Immediate notice of the temporary guardianship order shall be served by the petitioner upon the following:

(1) The ward, if the ward is at least fifteen (15) years of age;

(2) The parents of the ward, if the ward is a minor;

(3) The spouse, if any, of the ward;

(4) Any other person who is the guardian of the person or of the estate of the ward, or any other person who has been the primary caregiver of the ward;

(5) The Department of Human Services when the temporary guardian appointed serves as guardian of five (5) or more wards;

(6) If there is neither a known parent nor known spouse, at least one (1) of the nearest competent relatives by blood or marriage of the ward, if known; and

(7) If directed by the court:

(A) Any department, bureau, agency, or political subdivision of the United States or of this state which makes or awards compensation, pension, insurance, or other allowance for the benefit of the ward or his or her estate;

(B) Any department, bureau, agency, or political subdivision of the United States or of this state or any charitable organization, which may be charged with the supervision, control, or custody of the incompetent; or

(C) Any other person designated by the court.

(c) The notice shall include:

(1) A copy of the petition;

(2) A copy of the temporary order and order of appointment;

(3) Notice of a hearing date; and

(4) A statement of rights of the proposed ward as provided in § 28-65-207(b) and § 28-65-213.

(d) If the proposed ward is at least fifteen (15) years of age, there shall be personal service upon him or her if personal service can be had. Service on others shall be according to the Arkansas Rules of Civil Procedure or as otherwise provided by the court.

(e) Notice need not be given to any person listed in § 28-65-207(a)(1)-(6).

(f) Within fourteen (14) days of the entry of the temporary guardianship order, a full hearing on the merits shall be held.

(g)(1) If the petitioner is unable to serve a person entitled to notice under this section despite reasonable efforts, the petitioner shall make further reasonable efforts after the full hearing on the merits to serve the person with a copy of the original pleadings and a copy of the temporary guardianship order.

(2) The respondent may request a subsequent review hearing before the court that shall be scheduled as soon as reasonably possible.

(h) The temporary guardian shall make such reports as the court shall direct.

(i) In all other respects, the provisions of this chapter concerning guardians shall apply to temporary guardians, and an appeal may be taken from the order of appointment of a temporary guardian.

(j) The letters issued to a temporary guardian shall state the date of expiration of the authority of the temporary guardian.

History. Acts 1985, No. 940, § 21; A.S.A. 1947, § 57-840; Acts 1987, No. 535, § 1; 1993, No. 1295, § 1; 2011, No. 9, § 1; 2021, No. 516, § 4.

Amendments. The 2021 amendment substituted “Emergency and temporary guardianships” for “Temporary guardian” in the section heading; rewrote and redesignated (a)(1) as (a)(1)(A); added (a)(1)(B) and (a)(1)(C); rewrote (a)(2)(A); rewrote and redesignated (a)(2)(B)(i) as (a)(2)(B); redesignated (a)(2)(B)(ii) as (a)(3); inserted “emergency” in (a)(3); substituted “if the ward is at least fifteen (15) years of

age” for “if over fourteen (14) years of age” in (b)(1); rewrote (b)(4); inserted “if known” in (b)(6); in (c)(4), inserted “of the proposed ward” and substituted “§ 28-65-207(b) and § 28-65-213” for “§ 28-65-207(b)(1)”; substituted “proposed ward is at least fifteen (15)” for “ward is over fourteen (14)” in (d); substituted “fourteen (14) days” for “three (3) working days” in (f); rewrote (g); deleted “and shall account to the court upon termination of his or her authority” following “direct” in (h); and inserted “all” in (i).

CASE NOTES

ANALYSIS

Emergency Appointment.

Length of Appointment.

Waiver of Notice.

Emergency Appointment.

Even if the mother had consented to the continuation of a guardianship, she had withdrawn that consent, and since she had not been found to be an unfit parent, the temporary guardianship should have automatically ended. *Hood v. Hood*, 2016 Ark. App. 266, 493 S.W.3d 779 (2016).

Plain reading of subdivision (a)(2) of this section provides that a temporary guardianship may last only up to 90 days, unless it is determined after a hearing that it is necessary to extend it for another period not to exceed 90 days. *Hood v. Hood*, 2016 Ark. App. 266, 493 S.W.3d 779 (2016).

Trial court violated subdivision (a)(2) of

this section in continuing a temporary guardianship of two minor children where the guardianship had lasted more than 90 days, and no hearing to determine the propriety of an extension and whether an emergency still existed had been held. *Hood v. Hood*, 2016 Ark. App. 266, 493 S.W.3d 779 (2016).

Length of Appointment.

Because a temporary guardianship expired after 90 days, the circuit court did not err as a matter of law in concluding that the mother lacked standing to challenge the adoption of the daughter's child. *Hinton v. Bethany Christian Servs.*, 2015 Ark. App. 301, 462 S.W.3d 361 (2015).

Waiver of Notice.

Circuit court did not clearly err when it found that appellant's waiver of notice as written applied to “all proceedings” and that appellant did not intend it to be limited to only proceedings that involved

the appointment of his parents as guardians to his children, as opposed to other persons; although appellant could have limited under the statute his waiver to waive notice only of specific hearings, he

failed to do so. *Paschall v. Paschall*, 2018 Ark. App. 514, 563 S.W.3d 592 (2018).

Cited: *Whaley v. Beckham*, 2016 Ark. 196, 492 S.W.3d 65 (2016).

28-65-222. Parental appointment of temporary guardian.

(a)(1) Except as provided in § 28-65-218 and in subdivision (a)(2) of this section, a parent of a minor child may appoint one (1) or more persons to act as a temporary guardian of his or her minor child in the event of the death of the parent if the:

(A) Parent signs a notarized writing that includes the:

(i) Name and date of birth of the minor child for whom the person is being appointed as guardian;

(ii) Name of each person being appointed as a guardian of the minor child; and

(iii) Sworn attestation of two (2) witnesses that states and affirms that each witness witnessed the parent sign the notarized writing;

(B) Notarized writing signed by the parent as required under subdivision (a)(1)(A) of this section is no more than five (5) years old; and

(C) Each person appointed by the parent as a guardian of the minor child consents to the appointment in a signed and notarized writing.

(2) An appointing parent may appoint two (2) people as co-guardians of the minor child if the two (2) people are married to each other.

(3) Both parents of the minor child shall sign the notarized writing required under subdivision (a)(1)(A) of this section if both parents are alive.

(4) A parent may revoke or amend his or her appointment of a guardian under this section at any time before his or her death.

(b)(1) An appointment of a guardian for a minor child under this section is immediately effective upon the death of:

(A) The appointing parent if the other parent is deceased; or

(B) Both appointing parents.

(2)(A) Upon the death of both appointing parents or an appointing parent if the other parent is deceased, the guardian shall have temporary guardianship of the minor child for no longer than forty-five (45) days.

(B) A court may extend the time period of the initial temporary guardianship for an additional ninety (90) days or terminate the temporary guardianship for good cause.

(c) A person who is appointed by an appointing parent as a temporary guardian of a minor child under this section and who is willing to become the permanent guardian of the minor child shall follow the procedures required under this chapter to obtain permanent guardianship of the minor child.

(d) Unless otherwise provided by law, a court shall comply with the wishes of an appointing parent and appoint each person appointed by

the appointing parent as temporary guardian of the appointing parent’s minor child as a permanent guardian of the minor child unless the person appointed as guardian is determined to be unfit by the court.

(e) A notarized writing required under subdivision (a)(1)(A) of this section does not supersede a court order concerning child custody that exists at the time of the death of one (1) or both parents.

History. Acts 2021, No. 701, § 1.

SUBCHAPTER 3 — POWERS AND DUTIES

SECTION.
28-65-311. Investments.

28-65-301. Duties of guardians generally.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Matthew L. Brunson, Family Law—Providing for Those Who Cannot Provide for Themselves: A Proposal for the Arkansas General Assembly to Follow in the Footsteps

of an Already Expansive Guardianship Law and Grant Guardians the Right to File for Divorce on Behalf of a Ward, 38 U. Ark. Little Rock L. Rev. 271 (2016).

CASE NOTES

ANALYSIS

Duties of the Guardian of an Estate.
Expenditures.
Expenditures Improper.
Expenditures Proper.

Duties of the Guardian of an Estate.
In light of the public policy favoring arbitration and the Legislature’s decision to refrain from specifically limiting a guardian’s ability to enter into arbitration agreements, a guardian of a patient’s person and the patient’s estate possessed the authority to enter into an arbitration agreement with a nursing home on behalf of the patient; therefore, the nursing home’s motion to compel arbitration should have been granted. GGNSC Holdings, LLC v. Lamb, 2016 Ark. 101, 487 S.W.3d 348 (2016).

Guardian failed to comply with her statutory responsibilities because she did not perform an inventory, nor did she provide the circuit court with an annual accounting; additionally, the guardian utilized two family bank accounts to pay all expenses. Rogers v. Ritchie, 2017 Ark. App. 420, 528 S.W.3d 272 (2017).

Expenditures.

Circuit court erred as a matter of law when it disallowed expenditures a guardian made during the pendency of a ward’s guardianship for the benefit of the guardian because it did not consider whether the expenditures were reasonable, necessary, and proper for the care and maintenance of the ward; the guardian was the ward’s spouse, and it was her testimony that the ward was the sole financial provider for almost the entirety of their 40-year marriage. Rogers v. Ritchie, 2017 Ark. App. 420, 528 S.W.3d 272 (2017).

Circuit court erred in ruling that money paid for life insurance premiums was an allowable expense of the guardianship because the money expended on the insurance premiums went toward policies on both the guardian’s and the ward’s lives; the circuit court was directed to consider whether the money expended for the guardian’s insurance premiums was proper for the care and maintenance of the ward. Rogers v. Ritchie, 2017 Ark. App. 420, 528 S.W.3d 272 (2017).

Expenditures Improper.

Because the guardianship terminated at the ward’s death, his funeral expenses

were not proper expenses of the guardianship. *Rogers v. Ritchie*, 2017 Ark. App. 420, 528 S.W.3d 272 (2017).

Expenditures Proper.

In a case involving the management of an estate, a trial court erred by determining that certain expenditures of behalf of a ward were improper; the guardian was allowed to make gifts on behalf of the ward under § 28-65-308(b), he could continue the ward's practice of supporting

family members, continuing donations to the ward's church was acceptable, and expenditures for food and clothing fell within the definition of what was required for maintenance. The law of trusts guided the evaluation of the duties and liabilities of the guardian of an estate. *Stautzenberger v. Stautzenberger*, 2013 Ark. 148, 427 S.W.3d 17 (2013).

Cited: Courtyard Gardens Health & Rehab., LLC v. Sheffield, 2016 Ark. 235, 495 S.W.3d 69 (2016).

28-65-302. Decisions requiring court approval.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Matthew L. Brunson, Family Law—Providing for Those Who Cannot Provide for Themselves: A Proposal for the Arkansas General Assembly to Follow in the Footsteps of an Already Expansive Guardianship Law and Grant Guardians the Right to File for Divorce on Behalf of a Ward, 38 U. Ark. Little Rock L. Rev. 271 (2016).

Gabrielle Davis-Jones, Note: A New Guardian Angle: A Proposed Change to Arkansas's Public Policy on Guardianship for Individuals with Intellectual Disabilities, 42 U. Ark. Little Rock L. Rev. 279 (2020).

28-65-303. Care, treatment, and confinement of ward.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Gabrielle Davis-Jones, Note: A New Guardian Angle: A Proposed Change to Arkansas's

Public Policy on Guardianship for Individuals with Intellectual Disabilities, 42 U. Ark. Little Rock L. Rev. 279 (2020).

28-65-305. Actions — Service of process.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Matthew L. Brunson, Family Law—Providing for Those Who Cannot Provide for Themselves: A Proposal for the Arkansas General Assembly to Follow in the Footsteps

of an Already Expansive Guardianship Law and Grant Guardians the Right to File for Divorce on Behalf of a Ward, 38 U. Ark. Little Rock L. Rev. 271 (2016).

CASE NOTES

Arbitration Agreement.

In light of the public policy favoring arbitration and the Legislature's decision to refrain from specifically limiting a guardian's ability to enter into arbitration agreements, a guardian of a patient's person and the patient's estate possessed the

authority to enter into an arbitration agreement with a nursing home on behalf of the patient; therefore, the nursing home's motion to compel arbitration should have been granted. *GGNSC Holdings, LLC v. Lamb*, 2016 Ark. 101, 487 S.W.3d 348 (2016).

28-65-308. Power to borrow money, make gifts, etc.**CASE NOTES****Expenditures Proper.**

In a case involving the management of an estate, a trial court erred by determining that certain expenditures of behalf of a ward were improper; the guardian was allowed to make gifts on behalf of the ward under subsection (b) of this section, he could continue the ward's practice of supporting family members, continuing

donations to the ward's church was acceptable, and expenditures for food and clothing fell within the definition of what was required for maintenance. The law of trusts guided the evaluation of the duties and liabilities of the guardian of an estate. *Stautzenberger v. Stautzenberger*, 2013 Ark. 148, 427 S.W.3d 17 (2013).

28-65-311. Investments.

(a) The guardian of the estate may, and when ordered by the court shall, deposit as a fiduciary, the funds of the ward in a financial institution of this state, as a general deposit, either in a checking account or a savings account.

(b) The guardian shall invest the funds of the ward not reasonably needed for the ward's care, maintenance, or education in securities selected by the guardian from among the following categories:

(1) Bonds, notes, or certificates of indebtedness which are the direct obligations of, or the principal and income of which are unconditionally guaranteed by, the United States;

(2) Bonds or notes issued by the State of Arkansas;

(3) Arkansas State Board of Education bonds issued under Acts 1937, No. 162 [repealed];

(4) Bonds issued by a county, city, incorporated town, or improvement district of the State of Arkansas, whether the bonds are the general obligation of the issuer or are payable out of a special fund, as long as the bonds are negotiable instruments under the law;

(5) Bonds issued by a school district of the State of Arkansas;

(6)(A) Shares, share accounts, or accounts of any building and loan association organized under the laws of the State of Arkansas, of any federal savings and loan association domiciled in the State of Arkansas which are insured by the Savings Association Insurance Fund, or of any credit union in Arkansas, for their eligible members, which are insured by the National Credit Union Administration.

(B) However, no such investment shall exceed the amounts so insured.

(C) Provided, nothing herein shall be construed to expand the field of membership of any credit union;

(7) Notes, bonds, debentures, or other similar obligations issued by federal land banks, federal intermediate credit banks, or banks for cooperatives, or any other obligations issued pursuant to the provisions of an Act of the United States Congress known as the Farm Credit Act of 1971 and acts amendatory thereto;

(8) Bonds issued by a national mortgage association;

(9) Notes or bonds secured by mortgage or deed of trust which the Federal Housing Administration has insured or has made a commitment to insure;

(10) Notes or bonds secured fully as to principal and interest by a first mortgage or deed of trust upon improved or timbered real property located in the State of Arkansas in which provision is made for regular periodic payments on the principal, at least annually, sufficient in amount to amortize the indebtedness during a period not exceeding fifteen (15) years. These notes or bonds are to be in an amount not exceeding sixty-five percent (65%) of the value of the real property security as determined by an appraisal thereof approved by the court;

(11) Bonds, notes, debentures, or other direct obligations of a state, county, or city located without the State of Arkansas but within the United States, or of a corporation incorporated under the laws of the United States or of any state of the United States or of the District of Columbia which, at the time of the purchase, shall be rated in either the highest or next-highest classification established by at least two (2) nationally recognized standard financial rating services;

(12) Shares of any open-end or closed-end management-type investment company or investment trust registered under the Investment Company Act of 1940, as amended, the portfolio of which is limited to the securities described in subdivisions (b)(1)-(11) of this section and to repurchase agreements fully collateralized by such securities, provided that the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian;

(13) Contracts for annuities or for life, health, or accident insurance on the person of the ward, or of another in whom the ward has an insurable interest, or a combination of any such contracts, if the contract is payable to the ward or to his or her estate, is in the usual form, and is issued by an insurance company authorized to do business in the State of Arkansas. Any such contract shall reserve the right in the ward to change the beneficiary thereof after the termination of his or her incompetency;

(14) Shares or interests in any common trust fund investing in common stocks or preferred stocks listed on a national securities exchange maintained by a guardian which is a state or national bank or trust company authorized by the provisions of §§ 28-69-201 — 28-69-204 to establish and maintain common trust funds; or

(15) Shares, securities, or other interests in an open-end or closed-end management-type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., as it existed on January 1, 2015, or an exchange-traded fund listed on a national securities exchange.

(c)(1) Without prior order of the court, no investment shall be made, other than an investment in:

(A) Direct obligations of, or obligations unconditionally guaranteed as to principal and income by, the United States;

(B) Bonds issued by the State of Arkansas;

(C) Shares of any investment company or investment trust described in subdivision (b)(12) of this section, the portfolio of which is limited to the securities described in subdivisions (c)(1)(A) and (B) of this section and to repurchase agreements fully collateralized by such securities, provided that the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian;

(D) Bonds issued by a school district in this state;

(E) Notes, bonds, debentures, or other similar obligations issued by a federal land bank, a federal intermediate credit bank, a bank for a cooperative, or any other obligation issued under the Farm Credit Act of 1971, 12 U.S.C. § 2001 et seq., as it existed on January 1, 2019;

(F) Bonds issued by a national mortgage association;

(G)(i) A certificate of deposit or another interest-bearing deposit account of a bank domiciled in this state that is insured by the Federal Deposit Insurance Corporation.

(ii) However, an investment in a certificate of deposit or an interest-bearing deposit account shall not exceed the amount insured; or

(H)(i) Shares, share certificates, share accounts, or accounts of a:

(a) Building and loan association organized under the laws of this state;

(b) Federal savings and loan association domiciled in this state and insured by the Savings Association Insurance Fund; or

(c)(1) Credit union in this state for eligible members that is insured by the National Credit Union Administration.

(2) Subdivision (c)(1)(H)(i)(c)(1) of this section does not expand the field of membership of a credit union.

(ii) However, an investment in shares, share certificates, share accounts, or accounts listed in subdivision (c)(1)(H)(i) of this section shall not exceed the amount insured.

(2) The court shall not approve an investment in an issue of securities which has been in default for a period exceeding one hundred twenty (120) days during the five (5) years next preceding the investment.

(d) If the guardian of the estate is a state or national bank or trust company authorized by the provisions of §§ 28-69-201 — 28-69-204 to establish and maintain common trust funds, the guardian may invest the ward's funds without prior order of the court in:

(1) Participation in the common trust fund which, by the terms of the instrument creating it, limits the purchase of investments for such funds to investments authorized in this chapter;

(2) Shares, securities, or other interests of any open-end or closed-end management-type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., as it existed on January 1, 2015; or

(3) An exchange-traded fund listed on a national securities exchange, the portfolio of which is limited to the securities authorized in this chapter.

History. Acts 1985, No. 940, § 35; A.S.A. 1947, § 57-854; Acts 1989, No. 658, §§ 1, 2; 1991, No. 347, § 1; 1997, No. 331, § 1; 2015, No. 1129, §§ 1, 2; 2019, No. 591, § 1.

Amendments. The 2019 amendment added (c)(1)(D) through (c)(1)(H).

28-65-322. Reports.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Gabrielle Davis-Jones, Note: A New Guardian Angle: A Proposed Change to Arkansas's Public Policy on Guardianship for Individuals with Intellectual Disabilities, 42 U. Ark. Little Rock L. Rev. 279 (2020).

28-65-323. Administration of deceased ward's estate.

CASE NOTES

Termination of Guardianship.

Because the guardianship terminated at the ward's death, his funeral expenses

were not proper expenses of the guardianship. *Rogers v. Ritchie*, 2017 Ark. App. 420, 528 S.W.3d 272 (2017).

SUBCHAPTER 4 — TERMINATION OF GUARDIANSHIP

SECTION.

28-65-401. Termination generally.

28-65-401. Termination generally.

(a) A guardianship is terminated:

(1) If the guardianship was solely because of the ward's incompetency for a cause other than minority, by an adjudication of the competency of the ward;

(2) By the death of the ward;

(3) If the guardianship was solely because of the ward's minority, the marriage of the ward shall terminate a guardianship of the person, but not of the estate of the ward except with respect to the ward's earnings for personal services; or

(4) If the guardianship was solely because of the ward's minority, by the ward's reaching the age of majority, unless the guardian receives a guardianship subsidy from the Department of Human Services, then the guardianship is terminated when the ward:

(A) Reaches twenty-one (21) years of age; or

(B) Who is eighteen (18) years of age or older requests termination of the guardianship.

(b) A guardianship may be terminated by court order after such notice as the court may require:

(1)(A) If the guardianship was solely because of the ward's minority, and either the ward attains his or her majority or the disability of minority of the ward is removed for all purposes by a court of competent jurisdiction.

(B) However, if the court finds upon a proper showing by substantial competent evidence that it is in the best interest of the ward that the guardianship be continued after the ward reaches majority, the court may order the guardianship to continue until such time as it may be terminated by order of the court;

(2) If the ward becomes a nonresident of this state; or

(3) If, for any other reason, the guardianship is:

(A) No longer necessary; and

(B) No longer in the best interest of the ward.

(c)(1) When a guardianship terminates otherwise than by the death of the ward, the powers of the guardian cease, except that a guardian of the estate may make disbursements for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the ward, and for expenses of administration.

(2) When a guardianship terminates by the death of the ward, the guardian of the estate may proceed under § 28-65-323, but the rights of all creditors against the ward's estate shall be determined by the law governing decedents' estates.

History. Acts 1985, No. 940, § 45; A.S.A. 1947, § 57-864; Acts 2013, No. 577, § 4; 2017, No. 717, § 1.

Amendments. The 2017 amendment

added the (b)(3)(A) and (b)(3)(B) designations; substituted "and" for "or for" in (b)(3)(A); and added "No longer in" in (b)(3)(B).

CASE NOTES

ANALYSIS

In General.

Best Interests of Ward.

Evidence.

Parents.

Presumption of Fit Parent.

Termination Not Warranted.

Termination Warranted.

In General.

Subdivision (b)(3) of this section plainly states that the method to terminate a guardianship is disjunctive: a guardianship may be terminated by court order if the guardianship is no longer necessary or for the best interest of the ward. *Donley v. Donley*, 2016 Ark. 243, 493 S.W.3d 762 (2016) (decided before the 2017 amendment).

Because the guardianship terminated at the ward's death, his funeral expenses were not proper expenses of the guardianship. *Rogers v. Ritchie*, 2017 Ark. App. 420, 528 S.W.3d 272 (2017).

Best Interests of Ward.

Denial of the mother's petition to terminate guardianship was improper because

this section was not applied to her in the least restrictive available method where there was no weight given to her decision to terminate despite the presumption that she acted in her child's best interest. Therefore, the application of this section violated the mother's constitutional right. *Troeskyn v. Herrington* (In re S.H.), 2012 Ark. 245, 409 S.W.3d 307 (2012), overruled in part, *Lineham v. Hyde* (In re W.L.), 2015 Ark. 289, 467 S.W.3d 129 (2015).

Circuit court's finding that it remained in the children's best interest to leave the guardianship with the paternal grandparents intact was clearly erroneous where the mother had stable employment, a suitable home, family support, and a close relationship with the children, and overnight visitation had been consistently exercised with no issues other than minor disciplinary disagreements with the paternal grandparents; thus, the fit-parent presumption that the mother had acted in her children's best interest was not rebutted. *Hartman v. Reardon* (In re E.M.R.), 2019 Ark. 116, 571 S.W.3d 15 (2019).

Evidence.

Fit parent who consented to a guardianship puts forth sufficient evidence to terminate the guardianship, and meets the burden going forward, by revoking consent and informing the court that the conditions necessitating the guardianship no longer exist; the guardians must rebut the presumption, by clear and convincing evidence, that termination of the guardianship is in the child's best interest, and the court must always consider the parent's right to parent his or her child in that decision. *Troesken v. Herrington* (In re S.H.), 2015 Ark. 75, 455 S.W.3d 313 (2015), overruled in part, *Lineham v. Hyde* (In re W.L.), 2015 Ark. 289, 467 S.W.3d 129 (2015).

Parents.

Fit parent is presumed to act in the child's best interest when consenting to the guardianship and, later, when terminating the guardianship; fit, natural parents who consent to a guardianship need additional protection in seeking to terminate the guardianship. *Troesken v. Herrington* (In re S.H.), 2015 Ark. 75, 455 S.W.3d 313 (2015), overruled in part, *Lineham v. Hyde* (In re W.L.), 2015 Ark. 289, 467 S.W.3d 129 (2015).

Circuit court erred in applying the two methods set forth in subdivision (b)(3) of this section in a conjunctive manner where the statute plainly stated that the methods were disjunctive. After the termination of the temporary guardianship, when the mother revoked her consent to the guardianship, she was entitled to the fit-parent presumption and the burden shifted to the opposing party to demonstrate that the guardianship was still necessary or in the child's best interest. *Donley v. Donley*, 2016 Ark. 243, 493 S.W.3d 762 (2016) (decided before the 2017 amendment).

Presumption of Fit Parent.

Under subdivision (b)(3) of this section, the mother was entitled to the fit-parent presumption that the guardianship of her children with the paternal grandparents was no longer necessary. It was clear from the record that the reasons for the guardianship, i.e., exposure to the former husband's family members and one child's feeling safer at the paternal grandparents' home, no longer existed at the time

of the termination hearing, and the circuit court clearly erred in finding that the reason for originally granting the guardianship still existed (mother's former husband was serving sentence for rape of one of the children). *Hartman v. Reardon* (In re E.M.R.), 2019 Ark. 116, 571 S.W.3d 15 (2019).

In a termination of guardianship proceeding, the mother was entitled to the fit parent presumption that she was acting in the child's best interest because no orders had ever made a finding she was unfit, including the family-in-need-of-services order that first placed temporary guardianship with the grandparents; and the circuit court had no authority to retroactively declare the mother unfit. *Henson v. Brumble*, 2021 Ark. App. 130 (2021).

Termination Not Warranted.

Circuit court did not err when it failed to terminate the guardianship of a child by the child's paternal aunt and uncle and to establish the child's maternal grandparent as the guardian of the child because the court considered the testimony of the status of the child's circumstances and made a determination regarding the child's best interest. *Smith v. Lovelace*, 2014 Ark. App. 345 (2014).

Trial court did not clearly err in denying an individual's petition to terminate a guardianship where he failed to provide persuasive compelling evidence that he was no longer incapacitated or that a guardianship was no longer necessary to protect his best interests, and the trial court was obviously persuaded by a psychologist's professional opinion that the individual was not yet ready to be without the protection afforded by the guardianship. *Foster v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 332, 521 S.W.3d 490 (2017).

Father's petition to terminate guardianship was properly denied where he had been found unfit as a parent in the guardianship proceedings, he remained unfit going into the hearing on his petition to terminate the guardianship, and he had invited the error as to whether he was required to prove that guardianship was no longer necessary and in the child's best interests given his attorney's concession at the outset of the petition hearing that the father had the burden to establish that he was a fit parent. *Pike v. Shuler* (In

re L.J.P.), 2019 Ark. App. 456, 588 S.W.3d 58 (2019).

Termination Warranted.

Child's natural parent who had consented to the guardianship of the child so that she could join the military and who was never found to be unfit as a parent was entitled to have the guardianship terminated because she put forth evidence that the guardianship was no longer necessary, as she had been discharged from the military, and the guardian failed to rebut the presumption that termination was in the child's best interest. The trial court's determination that the guardian did not rebut the presumption that the parent was acting in the child's best interest was not clearly erroneous, particularly because, where the case involved a child, the trial court's evaluation of the witnesses, their testimony, and the best interest of the child was entitled to a high degree of deference. *Witham v. Beck*, 2013 Ark. App. 351, 428 S.W.3d 537 (2013).

Father, who had a full-time job, was in a three-year committed relationship with his wife, had visited Arkansas 18 times to see the child and communicated with her through phone calls multiple times per week, and had the child for two six-week summer vacations, was a fit parent; thus, the trial court should have terminated the guardianship once the father revoked his consent. *Lineham v. Hyde* (In re Guardianship of W.L.), 2015 Ark. 289, 467 S.W.3d 129 (2015).

Circuit court erred in denying a mother's petition to terminate a guardianship because it applied a legal standard that failed to safeguard the mother's fundamental right with respect to the care, custody, and control of her child; when the mother withdrew her consent in her petition to terminate the guardianship and testified that the conditions necessitating the guardianship no longer existed, she met her burden going forward that the guardianship was no longer necessary. *Troesken v. Herrington* (In re S.H.), 2015 Ark. 75, 455 S.W.3d 313 (2015), overruled in part, *Lineham v. Hyde* (In re W.L.), 2015 Ark. 289, 467 S.W.3d 129 (2015).

Circuit court erred in denying a mother's petition to terminate a guardianship because the father's parents failed to rebut the presumption, by clear and convincing evidence, that termination of the

guardianship was in the child's best interest; the mother remained a fit parent, which was all that mattered for constitutional purposes, and no evidence was shown that the mother could not also provide the love and affection that the father's parents did. *Troesken v. Herrington* (In re S.H.), 2015 Ark. 75, 455 S.W.3d 313 (2015), overruled in part, *Lineham v. Hyde* (In re W.L.), 2015 Ark. 289, 467 S.W.3d 129 (2015).

Natural parent who has not been declared unfit is presumed to act in his or her own child's best interest, and this presumption is applicable when such a parent seeks to terminate an existing guardianship over his or her minor child, in which case a parent's petition to terminate the guardianship need only inform the court that the guardianship is no longer necessary, which is an otherwise fit parent's only burden of proof; once that lack of necessity is communicated to a trial court by a fit parent, the court ordinarily terminates the guardianship, and the guardianship should only remain in place due to some circumstance that could overcome the parent's fundamental right to raise his or her child (decided under former version of subdivision (b)(3) before the 2017 amendment). *Morris v. Clark*, 2019 Ark. 130, 572 S.W.3d 366 (2019).

Trial court's determination that it is in a minor ward's best interests for a guardianship to remain in place, standing alone, is insufficient to defeat a fit parent's substantive due process interest in raising his or her own child because there is a constitutional presumption that a fit parent acts in his or her child's best interests, so where the parent has not previously been found unfit, weighing best interests at the outset of an inquiry into terminating a guardianship is inappropriate, and the mere fact that a child may have more or better opportunities with another family cannot be enough to keep that child away from an otherwise fit parent (decided under former version of subdivision (b)(3) before the 2017 amendment). *Morris v. Clark*, 2019 Ark. 130, 572 S.W.3d 366 (2019).

When a parent who has not previously been determined to be unfit petitions for termination of an existing guardianship over his or her minor child, trial courts ordinarily should only decline to terminate the guardianship where the guard-

ian contests the parent’s fitness and establishes that the parent is presently unfit, and where an otherwise fit natural parent seeks to terminate an existing guardianship and the parent is not found to be presently unfit, a trial court should dispose of the guardianship routinely (decided under former version of subdivision (b)(3) before the 2017 amendment). *Morris v. Clark*, 2019 Ark. 130, 572 S.W.3d 366 (2019).

It was error to deny a parent’s petition to terminate a guardianship of the parent’s child to which the parent had consented because the parent was not found to be unfit, so the parent’s preference for what should happen to the child was entitled to special weight (decided under former version of subdivision (b)(3) before the 2017 amendment). *Morris v. Clark*, 2019 Ark. 130, 572 S.W.3d 366 (2019).

Record did not support the circuit court’s determination that the father was unfit, as the father was a presumptively

fit parent; once he petitioned the circuit court for termination of the guardianship, the burden was on the guardians to show he was unfit or some other special factors sufficient to overcome his fundamental right to raise his daughter. The guardians did not attempt to argue the father was unfit, and thus the circuit court was clearly erroneous in denying the father’s petition to terminate the guardianship. *Samples v. Ward*, 2020 Ark. App. 524, 614 S.W.3d 830 (2020).

In a termination of guardianship proceeding, the circuit court did not err in determining that there was nothing to indicate the mother was an unfit parent, and that it was in the child’s best interest to be raised by her mother; the mother testified that she had a stable income and a four-bedroom home and was married, she attended the child’s extracurricular activities, and had not missed any of the visits she was afforded. *Henson v. Brumble*, 2021 Ark. App. 130 (2021).

28-65-402. Restoration of capacity of ward.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Gabrielle Davis-Jones, Note: A New Guardian Angle: A Proposed Change to Arkansas’s	Public Policy on Guardianship for Individuals with Intellectual Disabilities, 42 <i>U. Ark. Little Rock L. Rev.</i> 279 (2020).
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SUBCHAPTER 7 — PUBLIC GUARDIAN FOR ADULTS

- SECTION.
- 28-65-702. Public Guardian for Adults — Appointment — Qualifications.
- 28-65-703. Public Guardian for Adults — Duties.

- SECTION.
- 28-65-705. No bond, fee, or copy charge required.
- 28-65-706. Termination of guardianships.

28-65-702. Public Guardian for Adults — Appointment — Qualifications.

- (a)(1) The Office of Chief Counsel of the Department of Human Services or the Office of Chief Counsel’s designee shall appoint an employee of the Office of Chief Counsel to serve as Public Guardian for Adults.
- (2) A prior authorized appointment of a public guardian by the Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall have continuing effect and be relied upon in regard to the public guardian’s authority to act on behalf of the ward.

(b)(1) In addition to the qualifications required under § 28-65-203, the public guardian shall:

- (A) Hold a degree in law or social work or a related field;
- (B) Submit to a criminal background check with satisfactory results as prescribed by the Department of Human Services;
- (C) Attend and complete at least twenty (20) hours of training approved by the department; and
- (D) Demonstrate competency and ability to carry out the values of the ward.

(2) The Public Guardian for Adults shall devote his or her entire time to the duties of the Office of Public Guardian for Adults.

(c) The Public Guardian for Adults:

- (1) May consent or withhold consent to health and long-term care treatment;
- (2) Shall advocate for the ward; and
- (3) Shall be functionally separate from and share no duties with any department employee whose job it is to prepare and offer services or treatment plans, or both, to any person.

History. Acts 2007, No. 862, § 4; 2015, No. 1203, §§ 2, 3; 2017, No. 913, § 132. substituted "Division of Aging, Adult, and Behavioral Health Services" for "Division of Aging and Adult Services" in (a)(2).

Amendments. The 2017 amendment

28-65-703. Public Guardian for Adults — Duties.

(a) The Public Guardian for Adults:

- (1) Shall administer and organize the work of the Office of Public Guardian for Adults;
- (2) May employ staff as necessary to carry out the functions of the office, including the employment of Deputy Public Guardians for Adults who:

(A) Meet the same qualifications as required for the Public Guardian for Adults in § 28-65-702;

(B) Have the same power and duties as the Public Guardian for Adults except those related to the administration and organization of the Office of Public Guardian for Adults; and

(C) May act on behalf of the Public Guardian for Adults in matters related to guardianships held by the Public Guardian for Adults; and

(3)(A) May accept the services of volunteers who shall possess all of the qualifications of a guardian required under § 28-65-203.

(B) If approved by the Public Guardian for Adults, the volunteer shall be reimbursed for expenses in the same manner as public employees.

(C) A volunteer shall not be an employee of any facility or program that provides services to the ward.

(D) Volunteers shall not be related to the owner or any staff member of any facility or program that provides services to the ward.

(b)(1) The Public Guardian for Adults shall receive and review referrals for adult guardianship.

(2) A court shall not appoint the Public Guardian for Adults as the guardian of a person or estate unless the Public Guardian for Adults petitions for the guardianship and consents to the appointment.

(c) The Public Guardian for Adults may petition to be appointed guardian of the person of an adult or guardian of the estate of an adult, or both, if:

(1) The Public Guardian for Adults has probable cause to believe that the adult lacks the capacity to make and communicate decisions necessary for his or her health, safety, and welfare or to manage his or her property;

(2) The Public Guardian for Adults believes that the adult is incapacitated;

(3) There is no suitable private guardian qualified and willing to accept the guardianship appointment; and

(4) A circuit court determines that the Public Guardian for Adults would be a suitable guardian for the incapacitated adult.

(d) If requested by the court having jurisdiction of the ward, the Public Guardian for Adults may petition to intervene in an established guardianship and petition to be named a successor guardian if all of the following conditions are met:

(1) The Public Guardian for Adults determines that the current guardian is unable or unwilling to perform his or her duties under the guardianship;

(2) There is no suitable private guardian qualified and willing to accept the guardianship appointment; and

(3) A circuit court determines that the Public Guardian for Adults would be a suitable guardian for the incapacitated adult.

(e)(1) The Public Guardian for Adults either directly or through staff or volunteered services shall monitor each ward and each ward's care and progress on a continuing basis.

(2) The monitoring shall include quarterly personal contact with each ward.

(3) A written record shall be created and maintained concerning each personal contact and shall contain the information specified in § 28-65-322.

(f)(1) The Public Guardian for Adults shall keep and maintain financial, case control, and statistical records in accordance with generally accepted professional business and accounting standards in all cases for which the Office of Public Guardian for Adults has been appointed guardian.

(2) Office records that identify individuals for whom the office has provided guardianship services shall be kept confidential except to the extent that disclosure is required by other laws.

(3) Office records shall be retained in accordance with state record retention rules.

(g) Unless specifically provided otherwise in this subchapter, this chapter is applicable to any guardianship established under this subchapter.

(h)(1) Upon petition by the Department of Human Services, a court may direct payment from the assets of the ward for services rendered or goods purchased by or for the ward during the course of the guardianship.

(2) Notwithstanding the requirement of § 28-51-303(b)(2)(A), the court may allow the sale of a ward's property at public auction for less than three-fourths ($\frac{3}{4}$) of the appraised value.

History. Acts 2007, No. 862, § 4; 2013, No. 582, § 1; 2015, No. 1203, § 4.

28-65-705. No bond, fee, or copy charge required.

(a) Bond shall not be required in connection with public guardian services under this subchapter.

(b) A fee may not be charged or collected by the circuit clerk or county clerk in connection with public guardian services under this subchapter, including without limitation fees for filing, summons, or subpoenas.

(c) The Department of Human Services is not required to pay for a copy of medical, mental health, financial, or other records that relate to a ward who is under the guardianship of a Public Guardian for Adults.

History. Acts 2007, No. 862, § 4; 2015, No. 1203, § 5; 2019, No. 955, § 3. **Amendments.** The 2019 amendment added (c).

28-65-706. Termination of guardianships.

(a) The court having jurisdiction of the ward may terminate the guardianship as provided under § 28-65-401 et seq., and subject to the procedures required under this section.

(b) Neither the Public Guardian for Adults, the Office of Public Guardian for Adults, nor a volunteer shall be entitled to compensation under § 28-65-108.

(c) Within forty (40) days after the death of the ward of a Public Guardian for Adults if the Public Guardian for Adults is the:

(1) Guardian of the person of the ward, the Public Guardian for Adults shall:

(A) File a report with the court; and

(B) Petition the court to terminate the guardianship of the Public Guardian for Adults over the deceased ward;

(2) Guardian of the estate of the ward, the Public Guardian for Adults shall:

(A) File a final account of the administration of the estate of the ward by the Public Guardian for Adults until the date of the death of the ward;

(B) Cause a notice of the filing of the final account to be published;

(C) Provide a copy of the final account and notice of the death of the ward to the Department of Human Services; and

(D) Petition the court to terminate the guardianship of the Public Guardian for Adults over the deceased ward; or

(3) Guardian of the person and the estate of the ward:

(A) File a final report and final account of the administration of the estate of the ward by the Public Guardian for Adults until the date of the death of the ward;

(B) Cause a notice of the filing of the final account to be published;

(C) Provide a copy of the final account and notice of the death of the ward to the department; and

(D) Petition the court to terminate the guardianship of the Public Guardian for Adults over the deceased ward.

(d) Upon the petition of the Public Guardian for Adults to terminate the guardianship of a deceased ward, the court shall:

(1) Conduct a hearing on the petition of the Public Guardian for Adults to terminate the guardianship and consider the petition, the delivery of funds, and the payment of funds for the disposition of the body of the ward as provided in this subsection;

(2) Terminate the guardianship;

(3) Discharge the Public Guardian for Adults from any further duty, liability, and accountability with regard to the guardianship and the estate of the deceased ward;

(4) Direct delivery of the funds of the deceased ward to the appropriate person or, if no appropriate person is available, to the registry of the court pursuant to the Arkansas Rules of Civil Procedure; and

(5) With regard to the disposal of the body of the ward:

(A) Direct the payment of funds for the disposal of the body of the ward in a manner provided in a prior arrangement made by the ward of the Public Guardian for Adults;

(B) Direct the payment of funds to dispose of the body of the ward if a prior arrangement was not made by the ward; or

(C) Consent to donate the body of the ward to medical science.

(e)(1) The estate of the deceased ward shall be distributed in accordance with the law on the administration of decedents' estates.

(2) The discharge of a Public Guardian for Adults is final.

(f) The Public Guardian for Adults and the department are not responsible for any costs, including without limitation costs related to the disposition of the body of the ward.

History. Acts 2007, No. 862, § 4; 2019, No. 529, §§ 1, 2.

Amendments. The 2019 amendment substituted "may terminate the guardianship as provided under § 28-65-401 et seq., and subject to the procedures required under this section" for "shall not

terminate the guardianship of a living ward of the Public Guardian for Adults unless the court declares that the ward is restored to capacity or a successor guardian is appointed" in (a); and added (c) through (f).

CHAPTER 66

UNIFORM VETERANS' GUARDIANSHIP ACT

SECTION.

28-66-113. Investments.

28-66-113. Investments.

(a)(1) A guardian shall invest the surplus funds of his or her ward's estate in securities or property as authorized under the laws of this state but only upon prior order of the court.

(2) However, a guardian may invest surplus funds without prior court authorization in:

(A) Direct unconditional interest-bearing obligations of this state or of the United States;

(B) Obligations where the interest and principal are unconditionally guaranteed by the United States;

(C) Bonds issued by a school district in this state;

(D) Notes, bonds, debentures, or other similar obligations issued by a federal land bank, a federal intermediate credit bank, a bank for a cooperative, or any other obligation issued under the Farm Credit Act of 1971, 12 U.S.C. § 2001 et seq., as it existed on January 1, 2019;

(E) Bonds issued by a national mortgage association;

(F)(i) A certificate of deposit or another interest-bearing deposit account of a bank domiciled in this state that is insured by the Federal Deposit Insurance Corporation.

(ii) However, an investment in a certificate of deposit or an interest-bearing deposit account shall not exceed the amount insured; or

(G)(i) Shares, share certificates, share accounts, or accounts of a:

(a) Building and loan association organized under the laws of this state;

(b) Federal savings and loan association domiciled in this state and insured by the Savings Association Insurance Fund; or

(c)(1) Credit union in this state for eligible members that is insured by the National Credit Union Administration.

(2) Subdivision (a)(2)(G)(i)(c)(1) of this section does not expand the field of membership of a credit union.

(ii) However, an investment in shares, share certificates, share accounts, or accounts listed in subdivision (a)(2)(G)(i) of this section shall not exceed the amount insured.

(b) A signed duplicate or certified copy of the petition for authority to invest shall be furnished to the proper office of the Veterans' Administration and a notice of hearing shall be given to the office for a hearing on a guardian's account.

(c) If a guardian of the estate is a state or national bank or trust company authorized by provisions of §§ 28-69-201 — 28-69-204 to establish and maintain common trust funds, the guardian may invest the ward's funds without prior order of the court in:

(1) Participation in the common trust funds if they have been established and maintained by the guardian;

(2) Shares, securities or other interests of any open-end or closed-end management-type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., as it existed on January 1, 2015; or

(3) An exchange-traded fund listed on a national securities exchange.

History. Acts 1943, No. 177, § 13; 1961, No. 36, § 1; A.S.A. 1947, § 57-513; Acts 2015, No. 1129, § 3; 2019, No. 591, § 2.

Amendments. The 2019 amendment added (a)(2)(C) through (a)(2)(G).

CHAPTER 68

UNIFORM POWER OF ATTORNEY ACT

SUBCHAPTER.

2. AUTHORITY.
3. STATUTORY FORMS.

SUBCHAPTER 1 — GENERAL PROVISIONS

28-68-105. Execution of power of attorney.

CASE NOTES

Arbitration Agreement.

While the writing was properly signed under this section, the writing did not grant authority to do all acts that a principal could do but instead referred to two general subjects, financial and healthcare, with no further explanation, and those terms were not among the descriptive terms for the subjects set out in §§ 28-68-204 through 28-68-217. The power of at-

torney did not grant the daughter the authority to agree to arbitration, and because she did not have authority to bind the nursing home resident (her father) to the arbitration agreement, the agreement lacked mutual assent and there was no valid arbitration agreement to enforce. *Malvern Operations, LLC v. Moss*, 2020 Ark. App. 355, 605 S.W.3d 291 (2020).

28-68-114. Agent's duties.

CASE NOTES

Improper Actions.

Where husband, who held power of attorney, conveyed ownership of real property and investment funds held as joint tenants with right of survivorship to a trust, the husband could not destroy the joint tenancy in either the real or personal property by his unilateral actions, and the wife's interest as the surviving tenant continued after the conveyance. *Liberty Bank of Ark. v. Byrd*, 2016 Ark. App. 86, 482 S.W.3d 746 (2016).

In a trust dispute, a husband's actions as power of attorney were contrary to a wife's testamentary intent and plan because the trust that the husband set up provided that upon the wife's death, the jointly held assets were to be disposed of according to the husband's estate plan, rather than the wife's plan. *Liberty Bank of Ark. v. Byrd*, 2016 Ark. App. 86, 482 S.W.3d 746 (2016).

28-68-116. Judicial relief.**CASE NOTES****Standing.**

In a trust dispute, although the argument was not raised in a bank's brief, an executor had standing under this section to bring an action for fraud on a wife's

rights because the executor was the wife's only heir and was named as a beneficiary in her will. *Liberty Bank of Ark. v. Byrd*, 2016 Ark. App. 86, 482 S.W.3d 746 (2016).

SUBCHAPTER 2 — AUTHORITY**SECTION.**

28-68-201. Authority that requires specific grant — Grant of general authority.

28-68-201. Authority that requires specific grant — Grant of general authority.

(a) An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

- (1) create, amend, revoke, or terminate an inter vivos trust;
 - (2) make a gift;
 - (3) create or change rights of survivorship;
 - (4) create or change a beneficiary designation;
 - (5) delegate authority granted under the power of attorney;
 - (6) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
- or

(7) exercise fiduciary powers that the principal has authority to delegate.

(b) Notwithstanding a grant of authority to do an act described in subsection (a), unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal, may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(c) Subject to subsections (a), (b), (d), and (e), if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in §§ 28-68-204 — 28-68-216.

(d) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to § 28-68-217.

(e) Subject to subsections (a), (b), and (d), if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(f) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

(g) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

History. Acts 1981, No. 659, 1; A.S.A. 1947, § 58-701; Acts 2011, No. 805, § 1; 2021, No. 804, § 1.

Amendments. The 2021 amendment added "create" in (a)(1).

CASE NOTES

Arbitration Agreement.

While the writing was properly signed under § 28-68-105, the writing did not grant authority to do all acts that a principal could do but instead referred to two general subjects, financial and healthcare, with no further explanation, and those terms were not among the descriptive terms for the subjects set out in §§ 28-68-204 through 28-68-217. The power of at-

torney did not grant the daughter the authority to agree to arbitration, and because she did not have authority to bind the nursing home resident (her father) to the arbitration agreement, the agreement lacked mutual assent and there was no valid arbitration agreement to enforce. *Malvern Operations, LLC v. Moss*, 2020 Ark. App. 355, 605 S.W.3d 291 (2020).

28-68-202. Incorporation of authority.

CASE NOTES

ANALYSIS

Application of Statute.

Arbitration Agreement.

Application of Statute.

Ademption of a devise did not take place as to unexpended, identifiable proceeds of a timber sale because the timber was sold by an attorney-in-fact at a time when the testatrix was incompetent, and the testatrix did not regain testamentary capacity before her death; the statute did not preclude such a holding because while the estate was unquestionably bound by the sale of the timber, the statute was silent on the issue of who was entitled to the proceeds of the sale. *Rodgers v. Rodgers*, 2012 Ark. 200, 406 S.W.3d 422 (2012).

Arbitration Agreement.

While the writing was properly signed under § 28-68-105, the writing did not grant authority to do all acts that a principal could do but instead referred to two general subjects, financial and healthcare, with no further explanation, and those terms were not among the descriptive terms for the subjects set out in §§ 28-68-204 through 28-68-217. The power of attorney did not grant the daughter the authority to agree to arbitration, and because she did not have authority to bind the nursing home resident (her father) to the arbitration agreement, the agreement lacked mutual assent and there was no valid arbitration agreement to enforce. *Malvern Operations, LLC v. Moss*, 2020 Ark. App. 355, 605 S.W.3d 291 (2020).

28-68-216. Taxes.**RESEARCH REFERENCES**

ALR. Construction and Application of U.S.C. §§ 3101 et seq. — Supreme Court Federal Insurance Contributions Act, 26 Cases. 7 A.L.R. Fed. 3d Art. 4 (2016).

SUBCHAPTER 3 — STATUTORY FORMS**SECTION.**

28-68-301. Statutory form power of attorney.

28-68-301. Statutory form power of attorney.

A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this chapter.

**ARKANSAS
STATUTORY FORM POWER OF ATTORNEY**

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act, Arkansas Code Title 28, Chapter 68.

This power of attorney does not authorize the agent to make healthcare decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one agent. If you wish to name more than one agent you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I _____ name the
(Name of Principal)
following person as my agent:

Name of Agent: _____
Agent's Address: _____
Agent's Telephone Number: _____

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of Successor Agent: _____
Successor Agent's Address: _____
Successor Agent's Telephone Number: _____

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Second Successor Agent: _____
Second Successor Agent's Address: _____
Second Successor Agent's Telephone Number: _____

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act, Arkansas Code Title 28, Chapter 68:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

- ☐ Real Property
- ☐ Tangible Personal Property
- ☐ Stocks and Bonds
- ☐ Commodities and Options
- ☐ Banks and Other Financial Institutions
- ☐ Operation of Entity or Business

- ☐ Insurance and Annuities
- ☐ Estates, Trusts, and Other Beneficial Interests
- ☐ Claims and Litigation
- ☐ Personal and Family Maintenance
- ☐ Benefits from Governmental Programs or Civil or Military Service
- ☐ Retirement Plans
- ☐ Taxes
- ☐ All Preceding Subjects

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

- ☐ Create, amend, revoke, or terminate an inter vivos trust
- ☐ Make a gift, subject to the limitations of § 28-68-217 of the Uniform Power of Attorney Act and any special instructions in this power of attorney
- ☐ Create or change rights of survivorship
- ☐ Create or change a beneficiary designation
- ☐ Authorize another person to exercise the authority granted under this power of attorney
- ☐ Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- ☐ Exercise fiduciary powers that the principal has authority to delegate

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

NOMINATION OF GUARDIAN (OPTIONAL)

If it becomes necessary for a court to appoint a guardian of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of Nominee for guardian of my estate: _____

Nominee's Address: _____

Nominee's Telephone Number: _____

Name of Nominee for guardian of my person: _____

Nominee's Address: _____

Nominee's Telephone Number: _____

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

Your Signature

Date

Your Name Printed

Your Address

Your Telephone Number

State of _____

County of _____

This document was acknowledged before me on _____,
(Date)

by _____.
(Name of Principal)

(Seal, if any)

Signature of Notary

My commission expires: _____

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

(1) do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;

(2) act in good faith;

(3) do nothing beyond the authority granted in this power of attorney; and

(4) disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

(Principal's Name) by (Your Signature) as Agent

Unless the Special Instructions in this power of attorney state otherwise, you must also:

(1) act loyally for the principal's benefit;

(2) avoid conflicts that would impair your ability to act in the principal's best interest;

(3) act with care, competence, and diligence;

(4) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(5) cooperate with any person that has authority to make healthcare decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and

(6) attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

(1) death of the principal;

(2) the principal's revocation of the power of attorney or your authority;

(3) the occurrence of a termination event stated in the power of attorney;

(4) the purpose of the power of attorney is fully accomplished; or

(5) if you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the

Special Instructions in this power of attorney state that such an action will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act, Arkansas Code Title 28, Chapter 68. If you violate the Uniform Power of Attorney Act, Arkansas Code Title 28, Chapter 68, or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

History. Acts 1965, No. 61, § 11; A.S.A. substituted “Create, amend” for “Amend” in the GRANT OF SPECIFIC AUTHORITY part of the form; and made a stylistic change.
1947, § 58–511; Acts 2011, No. 805, § 1; 2021, No. 804, § 2.

Amendments. The 2021 amendment

CHAPTER 69

FIDUCIARIES GENERALLY

SUBCHAPTER.

2. BANKS AND TRUST COMPANIES.

SUBCHAPTER 1 — GENERAL PROVISIONS

28-69-102. Definitions.

CASE NOTES

Public Policy.

Trial court considered case law from other jurisdictions that permitted the modification the trustee requested in this case, in order to qualify a beneficiary for public benefits, but the trial court did not find that the modification was permissible under public policy and Arkansas law; the court was not left with a firm conviction that a mistake was committed. In re Ruby G. Owen Trust, 2012 Ark. App. 381, 418 S.W.3d 421 (2012).

Trustee intended to modify the trust in order to qualify a beneficiary for public benefits; because impoverishing the beneficiary in order to qualify her would make the trust provisions void, the modified provisions would have been void on grounds of public policy, and the trial court’s denial of the modification motion was that the purpose for modifying the trust would be defeated. In re Ruby G. Owen Trust, 2012 Ark. App. 381, 418 S.W.3d 421 (2012).

SUBCHAPTER 2 — BANKS AND TRUST COMPANIES

SECTION.

28-69-206. Deposit of funds — Collateral
for uninsured deposit.

28-69-206. Deposit of funds — Collateral for uninsured deposit.

An Arkansas-chartered bank or savings and loan association that holds as trustee funds awaiting investment or distribution, if not prohibited by the instrument or judgment creating the trust, may deposit the funds in the commercial department of the bank or savings and loan association. However, if the amount of the deposit exceeds the Federal Deposit Insurance Corporation insurance coverage, the bank or savings and loan association shall pledge, as security for the payment of the deposit, bonds constituting general obligations of the United States or the State of Arkansas of a market value not less than the uninsured portion of the deposit.

History. Acts 1981, No. 837, § 1; A.S.A. 1947, § 58-120; Acts 2013, No. 1137, § 3.

SUBCHAPTER 3 — INCORPORATION OF POWERS BY REFERENCE**28-69-301. Definitions.****CASE NOTES****Applicability.**

State was entitled to the \$5016.61 in appellant's inmate account under the Arkansas State Prison Inmate Care and Custody Reimbursement Act, §§ 12-29-501 to 12-29-507 for a portion of the cost of housing appellant, because any money appellant received as a gift from his

mother that was deposited into his inmate account was clearly within § 12-29-502(4)'s definition of the term "estate." This section, which defined "estate" as it is used in the context of fiduciary relationships, did not apply. *MacKool v. State*, 2012 Ark. 287, 423 S.W.3d 28 (2012).

SUBCHAPTER 4 — REVOCATION, MODIFICATION, OR TERMINATION OF TRUST**28-69-401. Consent.****RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. Lynn Foster, Arkansas's Trust Code and Trust

Planning: A Ten-Year Perspective, 38 U. Ark. Little Rock L. Rev. 301 (2016).

CASE NOTES

ANALYSIS

Applicability.

Modification Denied.

Termination Denied.

Applicability.

Consent of a secondary beneficiary to trust amendments was not required because the express terms of the trusts permitted the amendments at issue. *Dawson v. Stoner-Sellers*, 2019 Ark. 410, 591 S.W.3d 299 (2019).

Modification Denied.

Trial court considered case law from other jurisdictions that permitted the modification the trustee requested in this case, in order to qualify a beneficiary for public benefits, but the trial court did not find that the modification was permissible under public policy and Arkansas law; the court was not left with a firm conviction that a mistake was committed. In *re Ruby G. Owen Trust*, 2012 Ark. App. 381, 418 S.W.3d 421 (2012).

Trustee intended to modify the trust in order to qualify a beneficiary for public benefits; because impoverishing the ben-

eficiary in order to qualify her would make the trust provisions void, the modified provisions would have been void on grounds of public policy, and the trial court's denial of the modification motion was that the purpose for modifying the trust would be defeated. In *re Ruby G. Owen Trust*, 2012 Ark. App. 381, 418 S.W.3d 421 (2012).

Termination Denied.

Circuit court did not err in granting a motion for directed verdict in an action to terminate a trust, because the beneficiary failed to meet her burden of proof under the statutory procedures set forth in this section and § 28-73-411; there was no evidence of a change in circumstances between the establishment of the trust and the settlor's death that would frustrate the purpose of the trust. Neither the timing of the settlor's death, nor the fact that the beneficiary had to disrupt her employment to care for her mother were unforeseen circumstances that frustrated the purpose of the trust. *Buckalew v. Arvest Trust Co., N.A.*, 2013 Ark. App. 28, 425 S.W.3d 819 (2013).

CHAPTER 70

UNIFORM PRINCIPAL AND INCOME ACT [REPEALED EFFECTIVE JANUARY 1, 2022]

SUBCHAPTER.

1. DEFINITIONS AND FIDUCIARY DUTIES. [REPEALED EFFECTIVE JANUARY 1, 2022.]
2. DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST. [REPEALED EFFECTIVE JANUARY 1, 2022.]
3. APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST. [REPEALED EFFECTIVE JANUARY 1, 2022.]
4. ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST. [REPEALED EFFECTIVE JANUARY 1, 2022.]
5. ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST. [REPEALED EFFECTIVE JANUARY 1, 2022.]
6. MISCELLANEOUS PROVISIONS. [REPEALED EFFECTIVE JANUARY 1, 2022.]

Publisher's Notes. This chapter, concerning the Uniform Principal And Income Act, is repealed by Acts 2021, No.

1088, § 1, effective January 1, 2022.

For text of the chapter effective until January 1, 2022, see the bound volume.

**SUBCHAPTER 1 — DEFINITIONS AND FIDUCIARY DUTIES [REPEALED
EFFECTIVE JANUARY 1, 2022]**

SECTION.

28-70-101. Short title. [Repealed effective January 1, 2022.]**28-70-102. Definitions.** [Repealed effective January 1, 2022.]**28-70-103. Fiduciary duties — General principles.** [Repealed effective January 1, 2022.]

SECTION.

28-70-104. Trustee's power to adjust. [Repealed effective January 1, 2022.]**28-70-101. Short title.** [Repealed effective January 1, 2022.]**Publisher's Notes.** This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-102. Definitions. [Repealed effective January 1, 2022.]**Publisher's Notes.** This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-103. Fiduciary duties — General principles. [Repealed effective January 1, 2022.]**Publisher's Notes.** This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-104. Trustee's power to adjust. [Repealed effective January 1, 2022.]**Publisher's Notes.** This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

**SUBCHAPTER 2 — DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST
[REPEALED EFFECTIVE JANUARY 1, 2022]**

SECTION.

28-70-201. Determination and distribution of net income. [Repealed effective January 1, 2022.]

SECTION.

28-70-202. Distribution to residuary and remainder beneficiaries. [Repealed effective January 1, 2022.]

28-70-201. Determination and distribution of net income. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-202. Distribution to residuary and remainder beneficiaries. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

SUBCHAPTER 3 — APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST [REPEALED EFFECTIVE JANUARY 1, 2022]

SECTION.

28-70-301. When right to income begins and ends. [Repealed effective January 1, 2022.]

28-70-302. Apportionment of receipts and disbursements when decedent dies or income inter-

SECTION.

est begins. [Repealed effective January 1, 2022.]

28-70-303. Apportionment when income interest ends. [Repealed effective January 1, 2022.]

28-70-301. When right to income begins and ends. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-302. Apportionment of receipts and disbursements when decedent dies or income interest begins. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-303. Apportionment when income interest ends. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

SUBCHAPTER 4 — ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST [REPEALED EFFECTIVE JANUARY 1, 2022]

PART 1 — RECEIPTS FROM ENTITIES [REPEALED EFFECTIVE JANUARY 1, 2022]

28-70-401. Character of receipts. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-402. Distribution from trust or estate. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-403. Business and other activities conducted by trustee. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

PART 2 — RECEIPTS NOT NORMALLY APPORTIONED [REPEALED EFFECTIVE JANUARY 1, 2022]

28-70-404. Principal receipts. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-405. Rental property. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-406. Obligation to pay money. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-407. Insurance policies and similar contracts. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

PART 3 — RECEIPTS NORMALLY APPORTIONED [REPEALED EFFECTIVE JANUARY 1, 2022]

28-70-408. Insubstantial allocations not required. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-409. Deferred compensation, annuities, and similar payments. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-410. Liquidating asset. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-411. Minerals, water, and other natural resources. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-412. Timber. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-413. Property not productive of income. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-414. Derivatives and options. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-415. Asset-backed securities. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

SUBCHAPTER 5 — ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST [REPEALED EFFECTIVE JANUARY 1, 2022]**SECTION.**

28-70-501. Disbursements from income. [Repealed effective January 1, 2022.]

28-70-502. Disbursements from principal. [Repealed effective January 1, 2022.]

28-70-503. Transfers from income to principal for depreciation. [Repealed effective January 1, 2022.]

SECTION.

28-70-504. Transfers from income to reimburse principal. [Repealed effective January 1, 2022.]

28-70-505. Income taxes. [Repealed effective January 1, 2022.]

28-70-506. Adjustments between principal and income because of taxes. [Repealed effective January 1, 2022.]

28-70-501. Disbursements from income. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-502. Disbursements from principal. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-503. Transfers from income to principal for depreciation.
[Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022. For text of section effective until January 1, 2022, see the bound volume.

28-70-504. Transfers from income to reimburse principal. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022. For text of section effective until January 1, 2022, see the bound volume.

28-70-505. Income taxes. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022. For text of section effective until January 1, 2022, see the bound volume.

28-70-506. Adjustments between principal and income because of taxes. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022. For text of section effective until January 1, 2022, see the bound volume.

SUBCHAPTER 6 — MISCELLANEOUS PROVISIONS [REPEALED EFFECTIVE JANUARY 1, 2022]

SECTION.

- 28-70-601. Uniformity of application and construction. [Repealed effective January 1, 2022.]
28-70-602. Severability clause. [Repealed effective January 1, 2022.]
28-70-603. [Reserved.] [Repealed effective January 1, 2022.]
28-70-604. Effective date. [Repealed effective January 1, 2022.]

SECTION.

- 28-70-605. Application of chapter to existing trusts and estates. [Repealed effective January 1, 2022.]
28-70-606. Transitional matters. [Repealed effective January 1, 2022.]

28-70-601. Uniformity of application and construction. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022. For text of section effective until January 1, 2022, see the bound volume.

28-70-602. Severability clause. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-603. [Reserved.] [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-604. Effective date. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-605. Application of chapter to existing trusts and estates. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

28-70-606. Transitional matters. [Repealed effective January 1, 2022.]

Publisher's Notes. This section is repealed by Acts 2021, No. 1088, § 1, effective January 1, 2022.

For text of section effective until January 1, 2022, see the bound volume.

CHAPTER 71

INVESTMENT OF TRUST FUNDS

SECTION.

28-71-107. Limited investment in private venture capital projects authorized.

28-71-107. Limited investment in private venture capital projects authorized.

(a) Unless prohibited by federal law or regulations promulgated thereunder, but notwithstanding any law or rule of this state to the contrary, fiduciaries and financial institutions may invest up to no more than two and one-half percent (2½%) of their funds eligible for investment, but not more than ten percent (10%) of their capital, including common capital stock, certified surplus, capital notes, and undivided profits, in Arkansas private venture capital projects without being in contravention of any prudent investor rule. This limitation is applicable

only at the time of investment, and it shall not constitute a contravention of the prudent investor rule if investments in Arkansas private venture capital projects are in excess of this limitation by virtue of a reduction in the amount of funds eligible for investment.

(b) The primary state regulators of the fiduciaries making such investments under this section shall promulgate rules for the implementation of this section.

(c)(1) The prudent investor rule is embodied in several laws of this state pertaining to the investment of funds by financial institutions and fiduciaries, and the General Assembly has determined that the people of this state would benefit by the limited relaxation of the prudent investor rule to the extent that fiduciaries and financial institutions should be allowed to invest a small portion of their assets in private venture capital projects within this state.

(2) It is the intent of this section to allow fiduciaries and financial institutions to invest up to two and one-half percent (2½%) of their funds eligible for investment, but not more than ten percent (10%) of their capital, including common capital stock, certified surplus, capital notes, and undivided profits, in Arkansas private venture capital projects without incurring liability for violation of the prudent investor rule.

History. Acts 1985, No. 905, §§ 1-3; A.S.A. 1947, §§ 58-308 — 58-310; Acts 2019, No. 315, § 3203.

substituted “rule” for “regulation” preceding “of this state” in (a); and deleted “and regulations” following “rules” in (b).

Amendments. The 2019 amendment

CHAPTER 72

PARTICULAR TRUSTS

SUBCHAPTER.

6. QUALIFIED SPOUSAL TRUST.

SUBCHAPTER 4 — ARKANSAS CUSTODIAL TRUST ACT

28-72-409. Use of custodial trust property.

CASE NOTES

Expenditures Proper.

In a case involving the management of an estate, a trial court erred by determining that certain expenditures of behalf of a ward were improper; the guardian was allowed to make gifts on behalf of the ward under § 28-65-308(b), he could continue the ward's practice of supporting family members, continuing donations to

the ward's church was acceptable, and expenditures for food and clothing fell within the definition of what was required for maintenance. The law of trusts guided the evaluation of the duties and liabilities of the guardian of an estate. *Stautzenberger v. Stautzenberger*, 2013 Ark. 148, 427 S.W.3d 17 (2013).

28-72-417. Distribution on termination.**CASE NOTES****Not Applicable to Inter Vivos Trusts.**

Circuit court erred in ruling that the interests of beneficiaries who predeceased the surviving settlor of an inter vivos trust lapsed upon the death of the beneficiaries; rather, the beneficiaries' descendants were entitled to the beneficiaries' shares

of the trust distribution under subdivision (a)(3)(iv) of this section, which provides for a deceased beneficiary's interest in a custodial trust to pass to the beneficiary's estate, did not apply to an inter vivos trusts. *Tait v. Community First Trust Co.*, 2012 Ark. 455, 425 S.W.3d 684 (2012).

SUBCHAPTER 6 — QUALIFIED SPOUSAL TRUST**SECTION.**

28-72-601. Definitions.
28-72-602. Settlement of trust.
28-72-603. Death of settlors.

SECTION.

28-72-604. Dissolution of marriage.
28-72-605. Applicability of other laws.

28-72-601. Definitions.

As used in this subchapter:

- (1) "Property" means an interest in any type of property that is:
 - (A) Held in a qualified spousal trust;
 - (B) Income earned from property held in a qualified spousal trust; and
 - (C) Property into which the interest, proceeds, or income earned from property held in a qualified spousal trust may be converted; and
- (2) "Qualified spousal trust" means a trust that:
 - (A) At the time of its creation has two (2) settlors who are married to each other; and
 - (B) Includes terms requiring that during the joint lives of the settlors, all property transferred to or held by the trustee shall be held and administered:
 - (i) In one (1) trust for the benefit of both settlors and allows:
 - (a) The trust to be revoked by either settlor or both settlors while either or both of the settlors are alive; and
 - (b) Each settlor the right to receive distributions of income or principal, whether mandatory or within the discretion of the trustee, from the entire trust for the joint lives of the settlors and for the life of the survivor;
 - (ii) In two (2) separate shares of one (1) trust for the benefit of each settlor and allows:
 - (a) A settlor to revoke his or her separate share of the trust without the participation or consent of the other settlor; and
 - (b) Each settlor to have the right to receive distributions of income or principal, whether mandatory or within the discretion of the trustee, from the separate share of the settlor or for the life of the settlor; or
 - (iii) Under the terms and conditions provided under subdivisions (2)(B)(i) and (2)(B)(ii) of this section.

History. Acts 2019, No. 1047, § 1.

28-72-602. Settlement of trust.

(a) A qualified spousal trust may include a trust term that is not inconsistent with the provisions of this subchapter, including without limitation a discretionary power to distribute trust property to a person other than a settlor.

(b)(1) Unless otherwise provided in writing by each settlor who transfers property to a qualified spousal trust, property that is held at any time in a qualified spousal trust, without regard to how the property was titled before the property was held:

(A) Has the same immunity from the claim of a separate creditor of either settlor as if the property were held outside the qualified spousal trust by both settlors as tenants by the entirety; and

(B) Shall be treated as tenants by entirety property for the purpose of immunity from federal and state bankruptcy laws.

(2) Property that is held in a qualified spousal trust is not immune from the claim of a creditor if the marriage of the settlors dissolves.

History. Acts 2019, No. 1047, § 1.

28-72-603. Death of settlors.

(a) After the death of both settlors, all property held by the trustee of the qualified spousal trust shall be distributed as directed by the then-current terms of the governing instrument of the qualified spousal trust.

(b) After the death of the first settlor, if immediately before his or her death the predeceased settlor's interest in the qualified spousal trust was held in a separate share, the property held in the predeceased settlor's separate share may pass into an irrevocable trust for the benefit of the surviving settlor as provided by the terms of the governing instrument, including without limitation a spendthrift provision.

History. Acts 2019, No. 1047, § 1.

28-72-604. Dissolution of marriage.

For purposes of the dissolution of the marriage of the settlors, the respective property rights of settlors who are married to each other shall not be affected or changed by the transfer of the property to, or the subsequent administration of the property as an asset of, a qualified spousal trust during the marriage of the settlors unless both of the settlors expressly agree otherwise in writing.

History. Acts 2019, No. 1047, § 1.

28-72-605. Applicability of other laws.

(a) The provisions of this subchapter are subject to the Uniform Voidable Transactions Act, § 4-59-201 et seq.

(b) This subchapter applies to a trust that meets the description and requirements of a qualified spousal trust under this subchapter regardless of whether the trust was created before or after July 24, 2019.

History. Acts 2019, No. 1047, § 1.

CHAPTER 73

ARKANSAS TRUST CODE

SUBCHAPTER.

1. GENERAL PROVISIONS AND DEFINITIONS.
4. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST.
5. CREDITOR'S CLAIMS — SPENDTHRIFT AND DISCRETIONARY TRUSTS.
6. REVOCABLE TRUSTS.
8. DUTIES AND POWERS OF TRUSTEE.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Lynn Foster, Arkansas's Trust Code and Trust Planning: A Ten-Year Perspective, 38 U. Ark. Little Rock L. Rev. 301 (2016).

SUBCHAPTER 1 — GENERAL PROVISIONS AND DEFINITIONS

SECTION.

- 28-73-103. Definitions.
- 28-73-105. Default and mandatory rules.

Effective Dates. Acts 2019, No. 1021,
§ 6: Jan. 1, 2020.

28-73-101. Short title.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Lynn Foster, Arkansas's Trust Code and Trust Planning: A Ten-Year Perspective, 38 U. Ark. Little Rock L. Rev. 301 (2016).

CASE NOTES

Order Not Appealable.

Trustee's appeal of the circuit court's order that he had breached his fiduciary

duty and that two trust assets had to be reappraised and the assets of the trust redistributed accordingly was properly

dismissed without prejudice due to lack of finality. Although § 28-1-116 governed probate matters, which Ark. R. App. P. Civ. 2(a)(12) dictated were immediately appealable, trust matters were governed by § 28-73-101 et seq., and those statutes were not designated by Ark. R. App. P. Civ. 2(a)(12); in addition, no parties had been

dismissed, the action had not been discharged, and the rights to the subject matter had not been concluded as the value of the two parcels of land was still unknown, and the value of each beneficiaries' share was unknown. *Clark v. Summers*, 2018 Ark. App. 225, 547 S.W.3d 511 (2018).

28-73-103. Definitions.

In this chapter:

(1) "Action", with respect to an act of a trustee, includes a failure to act.

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or Section 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on September 1, 2005.

(3) "Beneficiary" means a person that:

(A) has a present or future beneficial interest in a trust, vested or contingent; or

(B) in a capacity other than that of trustee, holds a power of appointment over trust property.

(4) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in § 28-73-405(a).

(5) "Community property" means all personal property, wherever situated, which was acquired as or became, and remained, community property under the laws of another jurisdiction, and all real property situated in another jurisdiction which is community property under the laws of that jurisdiction.

(6) "Conservator" means a person appointed by the court pursuant to § 28-67-101 et seq. to administer the estate of an individual who by reason of advanced age or physical disability is unable to manage his or her property.

(7) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(8) "Guardian" means a person appointed by a court pursuant to § 28-65-101 et seq. to have the care and custody of the estate of an incapacitated person.

(9) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(10) "Jurisdiction", with respect to a geographic area, includes a state or country.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(12) "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable by a trustee which is limited by an ascertainable standard, or which is exercisable

by another person only upon consent of the trustee or a person holding an adverse interest.

(13) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(14) "Qualified beneficiary" means a living beneficiary who on the date the beneficiary's qualification is determined:

(A) is a distributee or permissible distributee of trust income or principal;

(B) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subdivision (14)(A) terminated on that date, but the termination of those interests would not cause the trust to terminate; or

(C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(15) "Revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(16) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one (1) person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution, except to the extent another person has the power to revoke or withdraw that portion.

(17) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.

(18) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(19) "Terms of a trust" means:

(A) except as otherwise provided in § 28-76-102(8)(B), the manifestation of the settlor's intent regarding a trust's provisions as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding; or

(B) the trust's provisions as established, determined, or amended by:

(i) a trustee or trust director in accordance with applicable law;

(ii) court order; or

(iii) a nonjudicial settlement agreement under § 28-73-111.

(20) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(21) "Trustee" includes an original, additional, successor trustee, and a cotrustee.

History. Acts 2005, No. 1031, § 1; 2019, No. 1021, § 1.

Amendments. The 2019 amendment added the (19)(A), (19)(A)(i), and (19)(A)(ii) designations; added “except as otherwise provided in § 28-76-102(8)(B)”

in the introductory language of (19)(A); in (19)(A)(ii), deleted “as may be” preceding “established” and added “or”; added (19)(B); and made stylistic changes.

Effective Dates. Acts 2019, No. 1021, § 6: Jan. 1, 2020.

CASE NOTES

Not a Charitable Trust.

Circuit court erred in applying the cy pres doctrine to reform a testamentary trust because the testator created the trust for the administration of four life estates with the remainder to two churches, which vested on the testator's death, there was no provision that the devise was to serve a charitable purpose

or that restricted the churches from using the proceeds for noncharitable purposes, and neither the trustee nor the churches was directed to ensure that the use of the property be for a purpose benefiting any charity. *Covenant Presbytery v. First Baptist Church*, 2016 Ark. 138, 489 S.W.3d 153 (2016).

28-73-105. Default and mandatory rules.

(a) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this chapter except:

- (1) the requirements for creating a trust;
- (2) subject to §§ 28-76-109, 28-76-111, and 28-76-112 of the Uniform Directed Trust Act, § 28-76-101 et seq., the duty of a trustee to act in good faith and in accordance with the purposes of the trust;
- (3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;
- (4) the power of a court to modify or terminate a trust under §§ 28-73-410 — 28-73-416;
- (5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in § 28-73-501 et seq.;
- (6) the power of a court under § 28-73-702 to require, dispense with, or modify or terminate a bond;
- (7) the power of a court under § 28-73-708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;
- (8) the rights under §§ 28-73-1010 — 28-73-1013 of a person other than a trustee or beneficiary;
- (9) periods of limitation for commencing a judicial proceeding;
- (10) the power of a court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and
- (11) the subject-matter jurisdiction of a court for commencing a proceeding as provided in § 28-73-203.

History. Acts 2005, No. 1031, § 1; 2019, No. 1021, § 2.

Amendments. The 2019 amendment added “subject to §§ 28-76-109, 28-76-111,

and 28-76-112 of the Uniform Directed Trust Act” in (b)(2).

Effective Dates. Acts 2019, No. 1021, § 6: Jan. 1, 2020.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Lucy L. Holifield, Note: Property Law—Upending the Familiar Tools of Estate Planning: Equity Renders Revocable Trusts Subject

to the Arkansas Spousal Election. In re Estate of Thompson, 38 U. Ark. Little Rock L. Rev. 75 (2015).

CASE NOTES

Trust Amendments.

Consent of a secondary beneficiary to trust amendments was not required because the express terms of the trusts per-

mitted the amendments at issue. Dawson v. Stoner-Sellers, 2019 Ark. 410, 591 S.W.3d 299 (2019).

28-73-106. Common law of trusts — Principles of equity.

RESEARCH REFERENCES

Ark. L. Rev. T.W. Brown, Recent Developments, A Beneficiary’s Interest to Share in an Inter Vivos Trust Does Not Lapse When the Beneficiary Predeceases the Settlor, 66 Ark. L. Rev. 347 (2013).

U. Ark. Little Rock L. Rev. Lynn Foster, Arkansas’s Trust Code and Trust Planning: A Ten-Year Perspective, 38 U. Ark. Little Rock L. Rev. 301 (2016).

28-73-112. Rules of construction.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Lynn Foster, Arkansas’s Trust Code and Trust

Planning: A Ten-Year Perspective, 38 U. Ark. Little Rock L. Rev. 301 (2016).

CASE NOTES

Lapse of Deceased Beneficiary’s Interest.

Circuit court erred in ruling that the interests of beneficiaries who predeceased the surviving settlor of an inter vivos trust lapsed upon the death of the beneficiaries;

rather, the beneficiaries’ descendants were entitled to the beneficiaries’ shares of the trust distribution. Tait v. Community First Trust Co., 2012 Ark. 455, 425 S.W.3d 684 (2012).

SUBCHAPTER 2 — JUDICIAL PROCEEDINGS

28-73-201. Role of court in administration of trust.

CASE NOTES

Service of Process.

Summons in a trust administration case qualified as a special circumstance

and the circuit court did not abuse its discretion in denying a qualified trust beneficiary’s motion to declare the service

and process void and invalid; although the beneficiary argued that the summons was defective because the caption section said "Hamilton Living Trust" and did not name the trustee or the parties, the trustee had the summons issued in the name of the trust, as this section gave it the right to

do, and the summons was directed to the beneficiary, who received it and filed a timely answer (decided under former version of Ark. R. Civ. P. 4). *Hamilton v. Bank of the Ozarks* (In re *Hamilton Living Trust*), 2019 Ark. App. 76, 571 S.W.3d 53 (2019).

28-73-202. Jurisdiction over trustee and beneficiary.

CASE NOTES

Service of Process.

Summons in a trust administration case qualified as a special circumstance and the circuit court did not abuse its discretion in denying a qualified trust beneficiary's motion to declare the service and process void and invalid; although the beneficiary argued that the summons was defective because the caption section said "Hamilton Living Trust" and did not name

the trustee or the parties, the trustee had the summons issued in the name of the trust, as § 28-73-201 gave it the right to do, and the summons was directed to the beneficiary, who received it and filed a timely answer (decided under former version of Ark. R. Civ. P. 4). *Hamilton v. Bank of the Ozarks* (In re *Hamilton Living Trust*), 2019 Ark. App. 76, 571 S.W.3d 53 (2019).

SUBCHAPTER 4 — CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

SECTION.

28-73-401. Methods of creating trust.

28-73-402. Requirements for creation.

28-73-401. Methods of creating trust.

A trust may be created by:

(1) transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(2) declaration by the owner of property that the owner holds identifiable property as trustee;

(3) exercise of a power of appointment in favor of a trustee; or

(4) an agent under a power of attorney that expressly grants the agent the authority to create a trust.

History. Acts 2005, No. 1031, § 1; 2021, No. 804, § 3.

Amendments. The 2021 amendment added (4).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Lynn Foster, *Arkansas's Trust Code and Trust*

Planning: A Ten-Year Perspective, 38 U. Ark. Little Rock L. Rev. 301 (2016).

28-73-402. Requirements for creation.

(a) A trust is created only if:

(1) the settlor has capacity to create a trust;

- (2) the settlor indicates an intention to create the trust;
 - (3) the trust has a definite beneficiary or is:
 - (A) a charitable trust;
 - (B) a trust for the care of an animal, as provided in § 28-73-408; or
 - (C) a trust for a noncharitable purpose, as provided in § 28-73-409;
 - (4) the trustee has duties to perform; and
 - (5) the same person is not the sole trustee and sole beneficiary.
- (b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.
- (c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.
- (d) Notwithstanding subdivision (a)(1) of this section, a trust created by an agent under a power of attorney is valid if the:
- (1) trust is created by an agent under a power of attorney executed by the settlor as described in § 28-73-401(4); and
 - (2) settlor had the capacity to create a trust at the time he or she executed the power of attorney.

History. Acts 2005, No. 1031, § 1; 2021, No. 804, § 4.

Amendments. The 2021 amendment added (d).

RESEARCH REFERENCES

Ark. L. Rev. Christopher W. Wynne, Take Another Look, 65 Ark. L. Rev. 481 (2012).
 Comment: WWJD: A True Neutral Principles Approach? Arkansas Courts Should

28-73-405. Charitable purposes — Enforcement.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Lynn Foster, Arkansas's Trust Code and Trust Planning: A Ten-Year Perspective, 38 U. Ark. Little Rock L. Rev. 301 (2016).

CASE NOTES

ANALYSIS

Charitable Intent.
 Not a Charitable Trust.
 Standing.

Charitable Intent.

While the regional medical center was not the same entity as the hospital that the decedent left the remainder of his property to if the named beneficiaries predeceased him, the regional medical center was the appropriate cy pres beneficiary

because the entity that operated the hospital was the intended object of the decedent's bequest and the decedent had the charitable intent to promote public health when he made the devise to the hospital. Thus, the circuit court did not err in deciding that the decedent's estate should be used to further the patient-care and community programs that a new clinic would provide the community, and it fashioned a use for the funds as near to the decedent's intent as possible under the circumstances. In re Estate of Alexander,

2017 Ark. App. 588, 533 S.W.3d 618 (2017).

Not a Charitable Trust.

Circuit court erred in applying the cy pres doctrine to reform a testamentary trust because the testator created the trust for the administration of four life estates with the remainder to two churches, which vested on the testator’s death, there was no provision that the devise was to serve a charitable purpose or that restricted the churches from using the proceeds for noncharitable purposes, and neither the trustee nor the churches was directed to ensure that the use of the property be for a purpose benefiting any

charity. *Covenant Presbytery v. First Baptist Church*, 2016 Ark. 138, 489 S.W.3d 153 (2016).

Standing.

Grantors’ heirs had no legal standing to argue any issues concerning the enforcement of the charitable trust created by the subsequent deed as they were not the settlors who established the trust; and because they no longer possessed any interest in the property, they were not the “among others” contemplated in subsection (c) of this section. *Stone v. Wash. Reg’l Med. Ctr.*, 2017 Ark. 90, 515 S.W.3d 104 (2017).

28-73-407. Evidence of oral trust.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Lynn Foster, *Arkansas’s Trust Code and Trust Planning: A Ten-Year Perspective*, 38 U. Ark. Little Rock L. Rev. 301 (2016).

28-73-411. Modification or termination of noncharitable irrevocable trust by consent.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Lynn Foster, *Arkansas’s Trust Code and Trust Planning: A Ten-Year Perspective*, 38 U. Ark. Little Rock L. Rev. 301 (2016).

CASE NOTES

ANALYSIS

Applicability.
Termination Denied.

Applicability.

Consent of a secondary beneficiary to trust amendments was not required because the express terms of the trusts permitted the amendments at issue. *Dawson v. Stoner-Sellers*, 2019 Ark. 410, 591 S.W.3d 299 (2019).

Termination Denied.

Circuit court did not err in granting a motion for directed verdict in an action to

terminate a trust, because the beneficiary failed to meet her burden of proof under the statutory procedures set forth in §§ 28-69-401, 28-73-411; there was no evidence of a change in circumstances between the establishment of the trust and the settlor’s death that would frustrate the purpose of the trust. Neither the timing of the settlor’s death, nor the fact that the beneficiary had to disrupt her employment to care for her mother were unforeseen circumstances that frustrated the purpose of the trust. *Buckalew v. Arvest Trust Co., N.A.*, 2013 Ark. App. 28, 425 S.W.3d 819 (2013).

28-73-412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Lynn Foster, Arkansas's Trust Code and Trust Planning: A Ten-Year Perspective, 38 U. Ark. Little Rock L. Rev. 301 (2016).

28-73-413. Cy pres.

CASE NOTES

ANALYSIS

Doctrine Applicable.
Doctrine Inapplicable.

Doctrine Applicable.

While the regional medical center was not the same entity as the hospital that the decedent left the remainder of his property to if the named beneficiaries predeceased him, the regional medical center was the appropriate cy pres beneficiary because the entity that operated the hospital was the intended object of the decedent's bequest and the decedent had the charitable intent to promote public health when he made the devise to the hospital. Thus, the circuit court did not err in deciding that the decedent's estate should be used to further the patient-care and community programs that a new clinic would provide the community, and it fash-

ioned a use for the funds as near to the decedent's intent as possible under the circumstances. In re Estate of Alexander, 2017 Ark. App. 588, 533 S.W.3d 618 (2017).

Doctrine Inapplicable.

Circuit court erred in applying the cy pres doctrine to reform a testamentary trust because the testator created the trust for the administration of four life estates with the remainder to two churches, which vested on the testator's death, there was no provision that the devise was to serve a charitable purpose or that restricted the churches from using the proceeds for noncharitable purposes, and neither the trustee nor the churches was directed to ensure that the use of the property be for a purpose benefiting any charity. Covenant Presbytery v. First Baptist Church, 2016 Ark. 138, 489 S.W.3d 153 (2016).

28-73-415. Reformation to correct mistakes.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Lynn Foster, Arkansas's Trust Code and Trust Planning: A Ten-Year Perspective, 38 U. Ark. Little Rock L. Rev. 301 (2016).

CASE NOTES

ANALYSIS

Evidence.
Illustrative Cases.

Evidence.

In a trust reformation action, as a settlor's hearsay statements regarding who should or would benefit from the trust had no bearing on whether the estate itself

would benefit from the trust corpus, they were not against the interest of the declarant's estate and thus were not admissible under Ark. R. Evid. 804(b)(3) as statements against interest. Eft v. Rogers, 2012 Ark. App. 632, 425 S.W.3d 1 (2012).

Where appellants petitioned to reform a family revocable trust to remove appellee as residual beneficiary, the trial court did not abuse its discretion in excluding hear-

say testimony regarding certain aspects of the settlor's emotions and relationship that were not affirmative statements of her intent to amend the trust, and thus, were not admissible under Ark. R. Evid. 803(3) as evidence of her intent to do something in the future. *Eft v. Rogers*, 2012 Ark. App. 632, 425 S.W.3d 1 (2012).

as they did not show the settlor was not competent when she amended the trust and did not meet the high burden of proof required to remove appellee as the residual beneficiary or to prove that a mistake was made in the drafting of the estate-planning documents. *Eft v. Rogers*, 2012 Ark. App. 632, 425 S.W.3d 1 (2012).

Illustrative Cases.

Court properly denied appellants' petition under this section to reform a trust,

SUBCHAPTER 5 — CREDITOR'S CLAIMS — SPENDTHRIFT AND DISCRETIONARY TRUSTS

SECTION.

28-73-505. Creditor's claim against settlor.

28-73-501. Rights of beneficiary's creditor or assignee.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Lynn Foster, Arkansas's Trust Code and Trust Planning: A Ten-Year Perspective, 38 U. Ark. Little Rock L. Rev. 301 (2016).

CASE NOTES

Distributions Uncertain.

Circuit court properly dismissed a judgment creditor's action under this section seeking the debtors' interest in future distributions from trusts where the future distributions were contingent upon the

debtors' survival as beneficiaries, and thus they were not certain for purposes of a writ of garnishment. *J.B. Hunt, LLC v. Thornton*, 2014 Ark. 62, 432 S.W.3d 8 (2014).

28-73-502. Spendthrift provision.

RESEARCH REFERENCES

Ark. L. Rev. Isabelle V. Taylor, Comment: Creditor Rights and the Missing Link in the Arkansas Trust Code: Is Death Strong Enough "To Break the Chain?", 65 Ark. L. Rev. 433 (2012).

28-73-505. Creditor's claim against settlor.

(a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors. If a trust has more than one (1) settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one (1) settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(b) For purposes of this section:

(1) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power.

(2) On the lapse, release, or waiver of a power of withdrawal, the holder of a power of withdrawal is not, by reason of any such power of withdrawal, treated as the settlor of the trust.

(c)(1) Subject to § 4-59-204, for the purposes of this section, property contributed to the following trusts is not deemed to have been contributed by the settlor, and a person who would otherwise be treated as a settlor or a deemed settlor of the following trusts shall not be treated as a settlor:

(A) an irrevocable trust that is treated as qualified terminable interest property under section 2523(f) of the Internal Revenue Code of 1986 as in effect on January 1, 2015, if the settlor is a beneficiary of the trust after the death of the settlor's spouse;

(B) an irrevocable trust that is treated as a general power of appointment trust under section 2523(e) of the Internal Revenue Code of 1986 as in effect on January 1, 2015, if the settlor is a beneficiary of the trust after the death of the settlor's spouse;

(C) an irrevocable trust for the benefit of a person to the extent that the property of the trust was subject to a limited power of appointment or a general power of appointment in another person.

(2) For purposes of this subsection (c), a person is a beneficiary whether named under the initial trust instrument or through the exercise of a limited or general power of appointment by that person's spouse or by another person.

(3) For purposes of subdivision (c)(1)(C) of this section, a general power of appointment means a power of appointment exercisable in favor of the holder of the power, the estate of the holder of the power, a creditor of the holder of the power, or a creditor of the estate of the holder of the power.

(4) As used in subdivision (c)(1)(C) of this section, "limited power of appointment" means a power of appointment that is not a general power of appointment.

History. Acts 2005, No. 1031, § 1; inserted "a limited power of appointment" in (c)(1)(C); and added (c)(4).

Amendments. The 2021 amendment

RESEARCH REFERENCES

Ark. L. Rev. Isabelle V. Taylor, Comment: Creditor Rights and the Missing Link in the Arkansas Trust Code: Is Death Strong Enough “To Break the Chain?”, 65 Ark. L. Rev. 433 (2012).

U. Ark. Little Rock L. Rev. Lynn Foster, Arkansas’s Trust Code and Trust Planning: A Ten-Year Perspective, 38 U. Ark. Little Rock L. Rev. 301 (2016).

28-73-506. Overdue distribution.

CASE NOTES

Mandatory Distribution.

Although property subject to spendthrift provision would not become property of bankruptcy estate, duty of trustee upon beneficiary’s death was to make distribution of specific bequests to debtor and

not hold them in trust. Thus, under Arkansas law, spendthrift provision did not apply to specific bequests and did not prevent them from coming into bankruptcy estate. In re Caubbe, 505 B.R. 857 (Bankr. E.D. Ark. 2014).

SUBCHAPTER 6 — REVOCABLE TRUSTS

SECTION.

28-73-601. Capacity of settlor of revocable trust.

SECTION.

28-73-603. Settlor’s powers — Powers of withdrawal.

Effective Dates. Acts 2019, No. 1021, § 6: Jan. 1, 2020.

28-73-601. Capacity of settlor of revocable trust.

(a) The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

(b) Notwithstanding subsection (a), action taken by an agent under a power of attorney to create, amend, revoke, add property to a revocable trust, or direct the actions of a trustee of a revocable trust is valid if the:

- (1) power of attorney expressly grants the agent the authority to perform the action; and
- (2) settlor had the capacity to take the action at the time the power of attorney was executed.

History. Acts 2005, No. 1031, § 1; 2021, No. 804, § 5.

added (b) and redesignated the former section as (a).

Amendments. The 2021 amendment

CASE NOTES

Cited: Harbur v. O’Neal, 2014 Ark. App. 119, 432 S.W.3d 651 (2014).

28-73-602. Revocation or amendment of revocable trust.**CASE NOTES****Intent.**

Circuit court was not clearly wrong in finding that there was clear and convincing evidence that the decedent had transferred his interest in the partnership to the trust, because an attorney involved in preparing the decedent's estate plan testified as to an exchange of emails in which he described the decedent's interest in the family partnership as being held in the revocable trust. *Ashley v. Ashley*, 2012 Ark. App. 236, 405 S.W.3d 419 (2012).

Decedent specifically reserved the right as settlor to revoke the revocable trust at any time and manifested her intent to revoke the trust in part when she executed a quitclaim deed to one tract to her son, subsequently amended the revocable trust to except that tract from the trust property, and revoked that trust and created a new revocable trust that made no reference to the tract. *Garrett v. Neece*, 2019 Ark. App. 178, 574 S.W.3d 686 (2019).

28-73-603. Settlor's powers — Powers of withdrawal.

(a) To the extent a trust is revocable by a settlor, a trustee may follow a direction of the settlor that is contrary to the terms of the trust. To the extent a trust is revocable by a settlor in conjunction with a person other than a trustee or person holding an adverse interest, the trustee may follow a direction from the settlor and the other person holding the power to revoke even if the direction is contrary to the terms of the trust.

(b) While a trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(c) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

History. Acts 2005, No. 1031, § 1; 2019, No. 1021, § 3.

Effective Dates. Acts 2019, No. 1021, § 6: Jan. 1, 2020.

Amendments. The 2019 amendment added (a); and redesignated former (a) and (b) as (b) and (c).

SUBCHAPTER 7 — OFFICE OF TRUSTEE**28-73-701. Accepting or declining trusteeship.****RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. Lynn Foster, Arkansas's Trust Code and Trust

Planning: A Ten-Year Perspective, 38 U. Ark. Little Rock L. Rev. 301 (2016).

CASE NOTES**Safe Harbor.**

In a dispute over whether a bank properly declined a trusteeship, the circuit

court's order directing the bank to perform an accounting was proper because the bank's actions exceeded the mere

preservation of trust property and were instead consistent with exercising powers as trustee; therefore, reliance on the safe harbor provision in this section was un-

available. *Bank of the Ozarks v. Cossey* (In re Hamilton Living Trust), 2015 Ark. 367, 471 S.W.3d 203 (2015).

28-73-703. Cotrustees.

CASE NOTES

Failure to Agree.

Circuit court erred in concluding that no real estate transactions could be made without a unanimous decision of the cotrustees or prior court approval as that decision was in direct contravention of subsection (a) of this section, which allowed cotrustees who were unable to achieve unanimity to act by majority rule and was a change from the common law. *Wylie v. Shaw* (In re GNB III Trust), 2019 Ark. App. 171, 574 S.W.3d 159 (2019).

Circuit court did not err in refusing to approve the sale of a trust property to one

cotrustee where the transaction required a higher level of scrutiny under § 28-73-802, court approval was required and not just majority agreement, there was conflicting evidence of the property's value, two cotrustees were interested in purchasing the property and offered differing values, and there was evidence that two cotrustees were trying to exclude the other cotrustee from trust transactions and had not discussed the sale with her before filing the petition. *Wylie v. Shaw* (In re GNB III Trust), 2019 Ark. App. 171, 574 S.W.3d 159 (2019).

28-73-706. Removal of trustee.

CASE NOTES

Jury Trial.

In litigation brought by a secondary beneficiary over the administration of several family trusts, the circuit court erred by denying plaintiff a jury trial on his legal claims (breach of fiduciary duty, conversion, fraud and concealment, and con-

spiracy); the clean-up doctrine has been abolished in Arkansas. Plaintiff was not entitled to a jury trial on his equitable claims (removal of trustee and injunctive relief). *Dawson v. Stoner-Sellers*, 2019 Ark. 410, 591 S.W.3d 299 (2019).

28-73-709. Reimbursement of expenses.

CASE NOTES

Remand Necessary.

Trial court's award for labor and expenses was reversed and remanded as the trial court had not explained why it awarded the uncontroverted amount sub-

mitted by the other trustee for his labor costs, but ignored the uncontroverted amount submitted for reimbursement for materials. *Scott v. Scott*, 2016 Ark. App. 390, 499 S.W.3d 653 (2016).

SUBCHAPTER 8 — DUTIES AND POWERS OF TRUSTEE

SECTION.

28-73-808. [Repealed.]

Effective Dates. Acts 2019, No. 1021,
§ 6: Jan. 1, 2020.

28-73-802. Duty of loyalty.**CASE NOTES****ANALYSIS**

Claims for Breach of Trust.
 Duty of Loyalty.
 Sales to Cotrustee.
 Summary Judgment Improper.

Claims for Breach of Trust.

Beneficiary's claims that the trustee converted trust assets, deposited proceeds into her personal accounts, and actively concealed and failed to disclose her dealings with trust assets and investment of proceeds were assertions of breach of trust; therefore, the statute of limitations in the Arkansas Trust Code in § 28-73-1005 controlled, rather than the more general three-year tort limitations period in § 16-56-105. *Peck v. Peck*, 2019 Ark. App. 190, 575 S.W.3d 137 (2019).

Duty of Loyalty.

Appellant beneficiary, who argued that appellees owed a duty of loyalty to her in their administration of a trust, presented issues of material fact to be tried concerning a conflict between a co-trustee's fiduciary and personal interests and how it may have affected his vote preventing appellant from purchasing a 1.5-acre tract adjoining his land. Therefore, summary judgment in this case was inappropriate. *Pulliam v. Murphy*, 2016 Ark. App. 133, 485 S.W.3d 711 (2016).

28-73-808. [Repealed.]

Publisher's Notes. This section, concerning powers to direct, was repealed by Acts 2019, No. 1021, § 4, effective Janu-

Sales to Cotrustee.

Circuit court did not err in refusing to approve the sale of a trust property to one cotrustee where the transaction required a higher level of scrutiny under this section, court approval was required and not just majority agreement, there was conflicting evidence of the property's value, two cotrustees were interested in purchasing the property and offered differing values, and there was evidence that two cotrustees were trying to exclude the other cotrustee from trust transactions and had not discussed the sale with her before filing the petition. *Wylie v. Shaw (In re GNB III Trust)*, 2019 Ark. App. 171, 574 S.W.3d 159 (2019).

Summary Judgment Improper.

Genuine issues of material fact prevented summary judgment on a shareholder's claim that a bank breached a fiduciary duty where, inter alia, the shareholder alleged that he believed he was placing his individually held stock into a newly created revocable trust to protect his shares from creditors, he asked for help from an attorney who may have represented both the shareholder and the bank at relevant times, and he may not have been fully informed about the implications of the stock-transfer transaction, including the type of trust that was receiving the intended transfer. *Ash v. First Nat'l Bank of E. Ark.*, 2019 Ark. App. 147, 573 S.W.3d 584 (2019).

ary 1, 2020. The section was derived from Acts 2019, No. 1021, § 6: Jan. 1, 2020.

For current law, see § 28-76-101 et seq.

28-73-810. Recordkeeping and identification of trust property.**CASE NOTES****Claims for Breach of Trust.**

Beneficiary's claims that the trustee converted trust assets, deposited proceeds into her personal accounts, and actively concealed and failed to disclose her deal-

ings with trust assets and investment of proceeds were assertions of breach of trust; therefore, the statute of limitations in the Arkansas Trust Code in § 28-73-1005 controlled, rather than the more

general three-year tort limitations period in § 16-56-105. *Peck v. Peck*, 2019 Ark. App. 190, 575 S.W.3d 137 (2019).

28-73-813. Duty to inform and report.

RESEARCH REFERENCES

Ark. L. Rev. Molly S. Magee, Comment: Who Is the Client? Who Has the Privilege?: The Attorney Client Privilege in Trust Relationships in Arkansas, 65 Ark. L. Rev. 637 (2012).

U. Ark. Little Rock L. Rev. Lynn Foster, Arkansas's Trust Code and Trust Planning: A Ten-Year Perspective, 38 U. Ark. Little Rock L. Rev. 301 (2016).

CASE NOTES

Adequate Reports.

Material question of fact existed concerning the adequacy of a trustee's reports because the beneficiary argued the reports were inadequate and did not meet the disclosure requirements to trigger the statute of limitations in § 28-73-1005, and the trustee disagreed; thus, the circuit court erred in granting summary

judgment on statute of limitations grounds, particularly as it recognized that the adequacy of a report is an issue of fact when it denied summary judgment on the question of whether reports supplied by the trustee complied with subdivision (c)(1) of this section. *Peck v. Peck*, 2019 Ark. App. 190, 575 S.W.3d 137 (2019).

28-73-816. Specific powers of trustee.

CASE NOTES

Authority.

Trial court did not clearly err in refusing to disturb the assumption that the trustees executed a valid lease of the trust property where they had the power under subdivision (9) of this section and the trust document to enter the lease, and

nothing in the record overcame the presumption that the trustees had acted in accordance with their status, even though that status was not disclosed. *Preferred Med. Assocs., LLC v. Abraham Family Trust*, 2017 Ark. App. 260, 520 S.W.3d 710 (2017).

SUBCHAPTER 10 — LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEES

28-73-1001. Remedies for breach of trust.

CASE NOTES

ANALYSIS

Accounting.
Statute of Limitations.

Accounting.

To remedy a breach of trust that has occurred or may occur, the court may order a trustee to account; thus, an accounting is a remedy, not a separate cause

of action. *Dawson v. Stoner-Sellers*, 2019 Ark. 410, 591 S.W.3d 299 (2019).

Statute of Limitations.

Although the beneficiary's claims nominally sounded in tort, they were predominantly assertions of a breach of trust; therefore, the statute of limitations in the Arkansas Trust Code in § 28-73-1005 controlled, rather than the more general

three-year tort limitations period in § 16-56-105. The beneficiary's allegations clearly involved claims that the trustee breached her duties as trustee in her administration of the trusts. *Peck v. Peck*, 2019 Ark. App. 190, 575 S.W.3d 137 (2019).

Beneficiary's claims that the trustee converted trust assets, deposited proceeds

into her personal accounts, and actively concealed and failed to disclose her dealings with trust assets and investment of proceeds were assertions of breach of trust; by alleging a breach of duty to the trust beneficiaries, the beneficiary necessarily alleged a breach of trust. *Peck v. Peck*, 2019 Ark. App. 190, 575 S.W.3d 137 (2019).

28-73-1004. Attorney's fees and costs.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Lynn Foster, Arkansas's Trust Code and Trust Planning: A Ten-Year Perspective, 38 U. Ark. Little Rock L. Rev. 301 (2016).

CASE NOTES

Attorney's Fees Proper.

Award of attorney's fees was proper because a request for an accounting was rejected, the petition for attorney's fees was well supported by invoices and affidavits, and an accounting was an issue that was manifestly an aspect of trust administration. *Bank of the Ozarks v. Cossey (In re Hamilton Living Trust)*, 2015 Ark. 367, 471 S.W.3d 203 (2015).

Award of attorney's fees affirmed, but as the case was a judicial proceeding that involved the administration of a trust,

attorney's fees should have been awarded under this section rather than under § 16-22-308. *Reed v. Smith*, 2018 Ark. App. 313, 551 S.W.3d 407 (2018).

Circuit court's fee award was not an abuse of its discretion as nothing indicated that it failed to consider that some of the fees were incurred for the wife's personal interest, or that it made the award without due consideration of the equities in the trust case. *Genz v. Cooksey*, 2021 Ark. App. 175 (2021).

28-73-1005. Limitation of action against trustee.

CASE NOTES

ANALYSIS

Applicability.
Adequate Report.
Applicability.

Although the beneficiary's claims nominally sounded in tort, they were predominantly assertions of a breach of trust; therefore, the statute of limitations in the Arkansas Trust Code controlled, rather than the more general three-year tort limitations period in § 16-56-105. The beneficiary's allegations clearly involved claims that the trustee breached her duties as trustee in her administration of the trusts. *Peck v. Peck*, 2019 Ark. App. 190, 575 S.W.3d 137 (2019).

Beneficiary's claims that the trustee converted trust assets, deposited proceeds

into her personal accounts, and actively concealed and failed to disclose her dealings with trust assets and investment of proceeds were assertions of breach of trust; by alleging a breach of duty to the trust beneficiaries, the beneficiary necessarily alleged a breach of trust. *Peck v. Peck*, 2019 Ark. App. 190, 575 S.W.3d 137 (2019).

Adequate Report.

One-year limitations period in subsection (a) is triggered only when the trustee sends a report to the beneficiaries that meets the statutory-disclosure requirements, and whether a report meets the statutory-disclosure requirements is a question of fact. *Peck v. Peck*, 2019 Ark. App. 190, 575 S.W.3d 137 (2019).

Material question of fact existed con-

cerning the adequacy of a trustee’s reports because the beneficiary argued the reports were inadequate and did not meet the disclosure requirements to trigger the statute of limitations, and the trustee disagreed; thus, the circuit court erred in granting summary judgment on statute of

limitations grounds, particularly as it recognized that the adequacy of a report is an issue of fact when it denied summary judgment on the question of whether reports supplied by the trustee complied with § 28-73-813(c)(1). *Peck v. Peck*, 2019 Ark. App. 190, 575 S.W.3d 137 (2019).

28-73-1008. Exculpation of trustee.

CASE NOTES

Motion to Dismiss.

Circuit court abused its discretion when it granted defendant trustee’s motion to dismiss as it did not look at the factual allegations contained in the amended complaint or consider plaintiff’s arguments concerning whether the share-cancellation provision was unenforceable un-

der this section; instead, the circuit court took the view that the mere filing of a lawsuit challenging the trustee’s actions triggered the share-cancellation provision without regard to whether the trustee was acting in bad faith or with reckless indifference. *Peck v. Peck*, 2016 Ark. App. 423, 502 S.W.3d 553 (2016).

SUBCHAPTER 11 — MISCELLANEOUS PROVISIONS

28-73-1106. Application to existing relationships.

CASE NOTES

Amendment.

Even though community property was involved, a wife had the authority to amend the family trust after her husband’s death where the trust authorized

the surviving spouse to amend the trust, and under subsection (a) of this section, the terms of the trust prevailed over § 28-73-601(b)(1). *Cason v. Lambert*, 2015 Ark. App. 41, 454 S.W.3d 250 (2015).

CHAPTER 75

REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

SECTION.	SECTION.
28-75-101. Short title.	tronic communications of principal.
28-75-102. Definitions.	
28-75-103. Applicability.	28-75-110. Disclosure of other digital assets of principal.
28-75-104. User direction for disclosure of digital assets.	28-75-111. Disclosure of digital assets held in trust when trustee is original user.
28-75-105. Terms-of-service agreement.	28-75-112. Disclosure of contents of electronic communications held in trust when trustee not original user.
28-75-106. Procedure for disclosing digital assets.	28-75-113. Disclosure of other digital assets held in trust when trustee not original user.
28-75-107. Disclosure of content of electronic communications of deceased user.	
28-75-108. Disclosure of other digital assets of deceased user.	
28-75-109. Disclosure of content of elec-	

SECTION.

- 28-75-114. Disclosure of digital assets to guardian of estate.
28-75-115. Fiduciary duty and authority.
28-75-116. Custodian compliance and immunity.

SECTION.

- 28-75-117. Uniformity of application and construction.
28-75-118. Relation to Electronic Signatures and Global National Commerce Act.

28-75-101. Short title.

This chapter may be cited as the “Revised Uniform Fiduciary Access to Digital Assets Act”.

History. Acts 2017, No. 886, § 1.

28-75-102. Definitions.

As used in this chapter:

- (1) “Account” means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.
- (2) “Agent” means an attorney-in-fact granted authority under a durable or nondurable power of attorney.
- (3) “Carries” means engages in the transmission of an electronic communication.
- (4) “Catalogue of electronic communications” means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.
- (5) “Content of an electronic communication” means information concerning the substance or meaning of the communication which:
 - (A) Has been sent or received by a user;
 - (B) Is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public; and
 - (C) Is not readily accessible to the public.
- (6) “Court” means the circuit court of the county of residence of the account holder.
- (7) “Custodian” means a person that carries, maintains, processes, receives, or stores a digital asset of a user.
- (8) “Designated recipient” means a person chosen by a user using an online tool to administer digital assets of the user.
- (9) “Digital asset” means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.
- (10) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (11) “Electronic communication” has the same meaning set forth in 18 U.S.C. § 2510(12), as amended.

(12) “Electronic-communication service” means a custodian that provides to a user the ability to send or receive an electronic communication.

(13) “Fiduciary” means an original, additional, or successor personal representative, guardian of the estate, agent, or trustee.

(14) “Guardian of the estate” means a person appointed by a court to manage the estate of a living individual. The term includes a limited guardian and a temporary guardian.

(15) “Information” means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

(16) “Online tool” means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(17) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(18) “Personal representative” means an executor, administrator, special administrator, or person that performs substantially the same function under law of this state other than this chapter.

(19) “Power of attorney” means a record that grants an agent authority to act in the place of a principal.

(20) “Principal” means an individual who grants authority to an agent in a power of attorney.

(21) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(22) “Remote-computing service” means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. § 2510(14), as amended.

(23) “Terms-of-service agreement” means an agreement that controls the relationship between a user and a custodian.

(24) “Trustee” means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee.

(25) “User” means a person that has an account with a custodian.

(26) “Ward” means an individual for whom a guardian of the estate has been appointed. The term includes an individual for whom an application for the appointment of a guardian of the estate is pending.

(27) “Will” includes a codicil, testamentary instrument that only appoints an executor, and instrument that revokes or revises a testamentary instrument.

History. Acts 2017, No. 886, § 1.

28-75-103. Applicability.

(a) This chapter applies to:

(1) a fiduciary acting under a will or power of attorney executed before, on, or after August 1, 2017;

(2) a personal representative acting for a decedent who died before, on, or after August 1, 2017;

(3) a guardianship of the estate proceeding commenced before, on, or after August 1, 2017; and

(4) a trustee acting under a trust created before, on, or after August 1, 2017.

(b) This chapter applies to a custodian if the user resides in this state or resided in this state at the time of the user's death.

(c) This chapter does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

History. Acts 2017, No. 886, § 1.

28-75-104. User direction for disclosure of digital assets.

(a) A user may use an online tool to direct the custodian to disclose to a designated recipient or not to disclose some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

(b) If a user has not used an online tool to give direction under subsection (a) or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

(c) A user's direction under subsection (a) or (b) overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

History. Acts 2017, No. 886, § 1.

28-75-105. Terms-of-service agreement.

(a) This chapter does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(b) This chapter does not give a fiduciary or a designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or a designated recipient acts or represents.

(c) A fiduciary's or a designated recipient's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under § 28-75-104.

History. Acts 2017, No. 886, § 1.

28-75-106. Procedure for disclosing digital assets.

(a) When disclosing digital assets of a user under this chapter, the custodian may at its sole discretion:

(1) grant a fiduciary or designated recipient full access to the user's account;

(2) grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(3) provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(b) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this chapter.

(c) A custodian need not disclose under this chapter a digital asset deleted by a user.

(d) If a user directs or a fiduciary requests a custodian to disclose under this chapter some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

(1) a subset limited by date of the user's digital assets;

(2) all of the user's digital assets to the fiduciary or designated recipient;

(3) none of the user's digital assets; or

(4) all of the user's digital assets to the court for review in camera.

History. Acts 2017, No. 886, § 1.

28-75-107. Disclosure of content of electronic communications of deceased user.

If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the death certificate of the user;

(3) a certified copy of Letters Testamentary, Letters of Administration, or a small-estate affidavit or court order;

(4) unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications; and

(5) if requested by the custodian:

(A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(B) evidence linking the account to the user; or

(C) a finding by the court that:

(i) the user had a specific account with the custodian, identifiable by the information specified in subparagraph (5)(A);

(ii) disclosure of the content of electronic communications of the user would not violate 18 U.S.C. § 2701 et seq., as amended, 47 U.S.C. § 222, as amended, or other applicable law;

(iii) unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or

(iv) disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

History. Acts 2017, No. 886, § 1.

28-75-108. Disclosure of other digital assets of deceased user.

Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the representative gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the death certificate of the user;

(3) a certified copy of the Letters Testamentary, Letters of Administration, or a small-estate affidavit or court order; and

(4) if requested by the custodian:

(A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(B) evidence linking the account to the user;

(C) an affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(D) a finding by the court that:

(i) the user had a specific account with the custodian, identifiable by the information specified in subparagraph (4)(A); or

(ii) disclosure of the user's digital assets is reasonably necessary for administration of the estate.

History. Acts 2017, No. 886, § 1.

28-75-109. Disclosure of content of electronic communications of principal.

To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the

principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) an original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;
- (3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
 - (B) evidence linking the account to the principal.

History. Acts 2017, No. 886, § 1.

28-75-110. Disclosure of other digital assets of principal.

Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) an original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;
- (3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
 - (B) evidence linking the account to the principal.

History. Acts 2017, No. 886, § 1.

28-75-111. Disclosure of digital assets held in trust when trustee is original user.

Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

History. Acts 2017, No. 886, § 1.

28-75-112. Disclosure of contents of electronic communications held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the trust instrument or a certification of the trust under § 28-73-1013 that includes consent to disclosure of the content of electronic communications to the trustee;
- (3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
 - (B) evidence linking the account to the trust.

History. Acts 2017, No. 886, § 1.

28-75-113. Disclosure of other digital assets held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the trust instrument or a certification of the trust under § 28-73-1013;
- (3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
 - (B) evidence linking the account to the trust.

History. Acts 2017, No. 886, § 1.

28-75-114. Disclosure of digital assets to guardian of estate.

(a) After an opportunity for a hearing under state guardianship law, the court may grant a guardian of the estate access to the digital assets of a ward.

(b) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a guardian of the estate the catalogue of electronic communications sent or received by a ward and any digital assets, other than the content of electronic communications, in which the ward has a right or interest if the guardian of the estate gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the court order that gives the guardian of the estate authority over the digital assets of the ward; and
- (3) if requested by the custodian:

(A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the ward; or

(B) evidence linking the account to the ward.

(c) A guardian of the estate with general authority to manage the assets of a ward may request a custodian of the digital assets of the ward to suspend or terminate an account of the ward for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the guardian of the estate authority over the ward's property.

History. Acts 2017, No. 886, § 1.

28-75-115. Fiduciary duty and authority.

(a) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

- (1) the duty of care;
- (2) the duty of loyalty; and
- (3) the duty of confidentiality.

(b) A fiduciary's authority with respect to a digital asset of a user:

(1) except as otherwise provided in § 28-75-104, is subject to the applicable terms of service;

(2) is subject to other applicable law, including copyright law;

(3) in the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

(4) may not be used to impersonate the user.

(c) A fiduciary with authority over the property of a decedent, ward, principal, or settlor has the right to access any digital asset in which the decedent, ward, principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

(d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, ward, principal, or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws.

(e) A fiduciary with authority over the tangible, personal property of a decedent, ward, principal, or settlor:

(1) has the right to access the property and any digital asset stored in it; and

(2) is an authorized user for the purpose of computer-fraud and unauthorized-computer-access laws.

(f) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(g) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:

(1) if the user is deceased, a certified copy of the death certificate of the user;

(2) a certified copy of the Letters Testamentary, Letters of Administration, small-estate affidavit or court order, power of attorney, trust, or court order giving the fiduciary authority over the account; and

(3) if requested by the custodian:

(A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(B) evidence linking the account to the user; or

(C) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (3)(A).

History. Acts 2017, No. 886, § 1.

28-75-116. Custodian compliance and immunity.

(a) Not later than 30 days after receipt of the information required under §§ 28-75-107 — 28-75-115, a custodian shall comply with a request under this chapter from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(b) An order under subsection (a) directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. § 2702, as amended.

(c) A custodian may notify the user that a request for disclosure or to terminate an account was made under this chapter.

(d) A custodian may deny a request under this chapter from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(e) This chapter does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this chapter to obtain a court order which:

(1) specifies that an account belongs to the ward or principal;

(2) specifies that there is sufficient consent from the ward or principal to support the requested disclosure; and

(3) contains a finding required by law other than this chapter.

(f) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this chapter.

History. Acts 2017, No. 886, § 1.

28-75-117. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History. Acts 2017, No. 886, § 1.

28-75-118. Relation to Electronic Signatures and Global National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. § 7003(b).

History. Acts 2017, No. 886, § 1.

CHAPTER 76

UNIFORM DIRECTED TRUST ACT

SECTION.

- 28-76-101. Title.
- 28-76-102. Definitions.
- 28-76-103. Application — Principal place of administration.
- 28-76-104. Common law and principles of equity.
- 28-76-105. Exclusions.
- 28-76-106. Powers of trust director.
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Effective Dates. Acts 2019, No. 1021,
§ 6: Jan. 1, 2020.

28-76-101. Title.

This chapter may be cited as the “Uniform Directed Trust Act”.

History. Acts 2019, No. 1021, § 5.

Effective Dates. Acts 2019, No. 1021,
§ 6: Jan. 1, 2020.

28-76-102. Definitions.

As used in this chapter:

(1) “Breach of trust” includes a violation by a trust director or trustee of a duty imposed on that director or trustee by the terms of the trust, this chapter, or law of this state other than this chapter pertaining to trusts.

(2) “Directed trust” means a trust for which the terms of the trust grant a power of direction.

(3) “Directed trustee” means a trustee that is subject to a trust director’s power of direction.

(4) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(5) “Power of direction” means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee. The term includes a power over the investment, management, or distribution of trust property or other matters of trust administration. The term excludes the powers described in § 28-76-105(b).

(6) “Settlor” means a person, including a testator, that creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person’s contribution except to the extent another person has the power to revoke or withdraw that portion.

(7) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States.

(8) “Terms of a trust” means:

(A) except as otherwise provided in subparagraph (8)(B), the manifestation of the settlor’s intent regarding a trust’s provisions as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding; or

(B) the trust’s provisions as established, determined, or amended by:

(i) a trustee or trust director in accordance with applicable law;

(ii) court order; or

(iii) a nonjudicial settlement agreement under § 28-73-111.

(9) “Trust director” means a person that is granted a power of direction by the terms of a trust to the extent the power is exercisable

while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust.

(10) “Trustee” includes an original, additional, and successor trustee, and a cotrustee.

History. Acts 2019, No. 1021, § 5.

Effective Dates. Acts 2019, No. 1021,

§ 6: Jan. 1, 2020.

28-76-103. Application — Principal place of administration.

(a) This chapter applies to a trust, whenever created, that has its principal place of administration in this state, subject to the following rules:

(1) If the trust was created before January 1, 2020, this chapter applies only to a decision or action occurring on or after January 1, 2020.

(2) If the principal place of administration of the trust is changed to this state on or after January 1, 2020, this chapter applies only to a decision or action occurring on or after the date of the change.

(b) Without precluding other means to establish a sufficient connection with the designated jurisdiction in a directed trust, terms of the trust which designate the principal place of administration of the trust are valid and controlling if:

(1) a trustee’s principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(2) all or part of the administration occurs in the designated jurisdiction.

History. Acts 2019, No. 1021, § 5.

Effective Dates. Acts 2019, No. 1021,

§ 6: Jan. 1, 2020.

28-76-104. Common law and principles of equity.

The common law and principles of equity supplement this chapter, except to the extent modified by this chapter or law of this state other than this chapter.

History. Acts 2019, No. 1021, § 5.

Effective Dates. Acts 2019, No. 1021,

§ 6: Jan. 1, 2020.

28-76-105. Exclusions.

(a) In this section, “power of appointment” means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over trust property.

- (b) This chapter does not apply to a:
- (1) power of appointment;
 - (2) power to appoint or remove a trustee or trust director;
 - (3) power of a settlor over a trust to the extent the settlor has a power to revoke the trust;
 - (4) power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:
 - (A) the beneficiary; or
 - (B) another beneficiary represented by the beneficiary under § 28-73-301 et seq. with respect to the exercise or nonexercise of the power;
 - (5) power over a trust if:
 - (A) the terms of the trust provide that the power is held in a nonfiduciary capacity; and
 - (B) the power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the United States Internal Revenue Code of 1986, as amended.
 - (c) Unless the terms of a trust provide otherwise, a power granted to a person to designate a recipient of an ownership interest in or power of appointment over trust property which is exercisable while the person is not serving as a trustee is a power of appointment and not a power of direction.

History. Acts 2019, No. 1021, § 5.

Effective Dates. Acts 2019, No. 1021,
§ 6: Jan. 1, 2020.

28-76-106. Powers of trust director.

- (a) Subject to § 28-76-107, the terms of a trust may grant a power of direction to a trust director.
- (b) Unless the terms of a trust provide otherwise:
- (1) a trust director may exercise any further power appropriate to the exercise or nonexercise of a power of direction granted to the director under subsection (a); and
 - (2) trust directors with joint powers must act by majority decision.

History. Acts 2019, No. 1021, § 5.

Effective Dates. Acts 2019, No. 1021,
§ 6: Jan. 1, 2020.

28-76-107. Limitations on trust director.

A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under § 28-76-106(b)(1) regarding:

- (1) a payback provision in the terms of a trust necessary to comply with the reimbursement requirements of Medicaid law in Section 1917

of the Social Security Act, 42 U.S.C. Section 1396p(d)(4)(A), as amended; and

(2) a charitable interest in the trust, including notice regarding the interest to the Attorney General.

History. Acts 2019, No. 1021, § 5.

Effective Dates. Acts 2019, No. 1021,
§ 6: Jan. 1, 2020.

28-76-108. Duty and liability of trust director.

(a) Subject to subsection (b), with respect to a power of direction or further power under § 28-76-106(b)(1):

(1) a trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

(A) if the power is held individually, as a sole trustee in a like position and under similar circumstances; or

(B) if the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances; and

(2) the terms of the trust may vary the director's duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances.

(b) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than this chapter to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the director acts in that capacity, the director has no duty or liability under this chapter.

(c) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this section.

History. Acts 2019, No. 1021, § 5.

Effective Dates. Acts 2019, No. 1021,
§ 6: Jan. 1, 2020.

28-76-109. Duty and liability of directed trustee.

(a) A directed trustee shall take reasonable action to comply with a trust director's direction given to the directed trustee by a trust director acting within the scope of the powers expressly granted to the trust director in the trust instrument, and except as otherwise provided in the trust instrument, the directed trustee is not liable for:

(1) any loss that results directly or indirectly from any act taken or omitted as a result of the reasonable action of the directed trustee to comply with the direction of the trust director or the failure of the trust director to provide consent; and

(2) whenever a directed trust reserves to a trust director the authority to direct the making or retention of any investment, to the exclusion of the directed trustee, the directed trustee shall not be liable for any

loss resulting from the making or retention of any investment under such direction.

(b) Absent contrary provisions in the governing instrument, the actions of a directed trustee taken under subsection (a) of this section to comply with a direction of a trust director are administrative actions taken by the directed trustee solely to allow the directed trustee to perform the duties assigned to the directed trustee under the governing instrument and the administrative actions shall not constitute an undertaking by the directed trustee to participate in or otherwise take any fiduciary responsibility for the direction of a trust director.

(c) In an action against a directed trustee under this section, the burden to prove the matter by clear and convincing evidence is on the person seeking to hold the directed trustee liable.

(d) A directed trustee that has reasonable doubt about its duty under this section may petition the court for instructions.

(e) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this section.

History. Acts 2019, No. 1021, § 5.

Effective Dates. Acts 2019, No. 1021,

§ 6: Jan. 1, 2020.

28-76-110. Duty to provide information to trust director or trustee.

(a) Subject to § 28-76-111, a trustee shall provide information to a trust director to the extent the information is reasonably related both to:

- (1) the powers or duties of the trustee; and
- (2) the powers or duties of the director.

(b) Subject to § 28-76-111, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to:

- (1) the powers or duties of the director; and
- (2) the powers or duties of the trustee or other director.

(c) A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance.

(d) A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance.

History. Acts 2019, No. 1021, § 5.

Effective Dates. Acts 2019, No. 1021,

§ 6: Jan. 1, 2020.

28-76-111. No duty to monitor, inform, or advise.

(a) Unless the terms of a trust provide otherwise:

- (1) a trustee does not have a duty to:

- (A) monitor a trust director; or
- (B) inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the director; and
- (2) by taking an action described in paragraph (1), a trustee does not assume the duty excluded by paragraph (1).
- (b) Unless the terms of a trust provide otherwise:
 - (1) a trust director does not have a duty to:
 - (A) monitor a trustee or another trust director; or
 - (B) inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director; and
 - (2) by taking an action described in paragraph (1), a trust director does not assume the duty excluded by paragraph (1).

History. Acts 2019, No. 1021, § 5.

Effective Dates. Acts 2019, No. 1021,
§ 6: Jan. 1, 2020.

28-76-112. Application to trustee.

The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that in a directed trust a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under §§ 28-76-109 — 28-76-111.

History. Acts 2019, No. 1021, § 5.

Effective Dates. Acts 2019, No. 1021,
§ 6: Jan. 1, 2020.

28-76-113. Limitation of action against trust director.

(a) An action against a trust director for breach of trust must be commenced within the same limitation period as under § 28-73-1005 for an action for breach of trust against a trustee in a like position and under similar circumstances.

(b) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under § 28-73-1005 in an action for breach of trust against a trustee in a like position and under similar circumstances.

History. Acts 2019, No. 1021, § 5.

Effective Dates. Acts 2019, No. 1021,
§ 6: Jan. 1, 2020.

28-76-114. Defenses in action against trust director.

In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

History. Acts 2019, No. 1021, § 5.

Effective Dates. Acts 2019, No. 1021,

§ 6: Jan. 1, 2020.

28-76-115. Jurisdiction over trust director.

(a) By accepting appointment as a trust director of a trust subject to this chapter, the director submits to personal jurisdiction of the courts of this state regarding any matter related to a power or duty of the director.

(b) This section does not preclude other methods of obtaining jurisdiction over a trust director.

History. Acts 2019, No. 1021, § 5.

Effective Dates. Acts 2019, No. 1021,

§ 6: Jan. 1, 2020.

28-76-116. Office of trust director.

Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding the following matters:

- (1) acceptance under § 28-73-701;
- (2) giving of bond to secure performance under § 28-73-702;
- (3) reasonable compensation under § 28-73-708;
- (4) resignation under § 28-73-705;
- (5) removal under § 28-73-706; and
- (6) vacancy and appointment of successor under § 28-73-704.

History. Acts 2019, No. 1021, § 5.

Effective Dates. Acts 2019, No. 1021,

§ 6: Jan. 1, 2020.

28-76-117. Uniformity of application and construction.

In applying and construing this act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History. Acts 2019, No. 1021, § 5.

Effective Dates. Acts 2019, No. 1021,

§ 6: Jan. 1, 2020.

28-76-118. Relation to the Electronic Signatures and Global National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

History. Acts 2019, No. 1021, § 5.
Effective Dates. Acts 2019, No. 1021,
§ 6: Jan. 1, 2020.

CHAPTER 77

UNIFORM FIDUCIARY INCOME AND PRINCIPAL ACT

[EFFECTIVE JANUARY 1, 2022]

SUBCHAPTER.

1. GENERAL PROVISIONS. [EFFECTIVE JANUARY 1, 2022.]
2. FIDUCIARY DUTIES AND JUDICIAL REVIEW. [EFFECTIVE JANUARY 1, 2022.]
3. UNITRUST. [EFFECTIVE JANUARY 1, 2022.]
4. ALLOCATION OF RECEIPTS. [EFFECTIVE JANUARY 1, 2022.]
5. ALLOCATION OF DISBURSEMENTS. [EFFECTIVE JANUARY 1, 2022.]
6. DEATH OF INDIVIDUAL OR TERMINATION OF INCOME INTEREST. [EFFECTIVE JANUARY 1, 2022.]
7. APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST. [EFFECTIVE JANUARY 1, 2022.]
8. MISCELLANEOUS PROVISIONS. [EFFECTIVE JANUARY 1, 2022.]

Effective Dates. Acts 2021, No. 1088,
§ 3: Jan. 1, 2022.

SUBCHAPTER 1 — GENERAL PROVISIONS [EFFECTIVE JANUARY 1, 2022]

SECTION.	SECTION.
28-77-101. Short title. [Effective January 1, 2022.]	28-77-103. Scope. [Effective January 1, 2022.]
28-77-102. Definitions. [Effective January 1, 2022.]	28-77-104. Governing law. [Effective January 1, 2022.]

28-77-101. Short title. [Effective January 1, 2022.]

This chapter may be cited as the “Uniform Fiduciary Income and Principal Act”.

History. Acts 2021, No. 1088, § 2.
Effective Dates. Acts 2021, No. 1088,
§ 3: Jan. 1, 2022.

28-77-102. Definitions. [Effective January 1, 2022.]

In this chapter:

(1) "Accounting period" means a calendar year, unless a fiduciary selects another period of 12 calendar months or approximately 12 calendar months. The term includes a part of a calendar year or another period of 12 calendar months or approximately 12 calendar months which begins when an income interest begins or ends when an income interest ends.

(2) "Asset-backed security" means a security that is serviced primarily by the cash flows of a discrete pool of fixed or revolving receivables or other financial assets that by their terms convert into cash within a finite time. The term includes rights or other assets that ensure the servicing or timely distribution of proceeds to the holder of the asset-backed security. The term does not include an asset to which § 28-77-401, § 28-77-409, or § 28-77-414 applies.

(3) "Beneficiary" includes:

(A) for a trust:

(i) a current beneficiary, including a current income beneficiary and a beneficiary that may receive only principal;

(ii) a remainder beneficiary; and

(iii) any other successor beneficiary; and

(B) for an estate, an heir, legatee, and devisee.

(4) "Court" means a probate court.

(5) "Current income beneficiary" means a beneficiary to which a fiduciary may distribute net income, whether or not the fiduciary also may distribute principal to the beneficiary.

(6) "Distribution" means a payment or transfer by a fiduciary to a beneficiary in the beneficiary's capacity as a beneficiary, made under the terms of the trust, without consideration other than the beneficiary's right to receive the payment or transfer under the terms of the trust. "Distribute", "distributed", and "distributee" have corresponding meanings.

(7) "Estate" means a decedent's estate. The term includes the property of the decedent as the estate is originally constituted and the property of the estate as it exists at any time during administration.

(8) "Fiduciary" includes a trustee, trust director determined under § 28-76-102, personal representative, and person acting under a delegation from a fiduciary. The term includes a person that holds property for a successor beneficiary whose interest may be affected by an allocation of receipts and expenditures between income and principal. If there are two or more co-fiduciaries, the term includes all co-fiduciaries acting under the terms of the trust and applicable law.

(9) "Income" means money or other property a fiduciary receives as current return from principal. The term includes a part of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in § 28-77-401 et seq.

(10) "Income interest" means the right of a current income beneficiary to receive all or part of net income, whether the terms of the trust

require the net income to be distributed or authorize the net income to be distributed in the fiduciary's discretion. The term includes the right of a current beneficiary to use property held by a fiduciary.

(11) "Independent person" means a person that is not:

(A) for a trust:

(i) a qualified beneficiary determined under § 28-73-103;

(ii) a settlor of the trust; or

(iii) an individual whose legal obligation to support a beneficiary may be satisfied by a distribution from the trust;

(B) for an estate, a beneficiary;

(C) a spouse, parent, brother, sister, or issue of an individual described in subparagraph (A) or (B);

(D) a corporation, partnership, limited liability company, or other entity in which persons described in subparagraphs (A) through (C), in the aggregate, have voting control; or

(E) an employee of a person described in subparagraph (A), (B), (C), or (D).

(12) "Mandatory income interest" means the right of a current income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(13) "Net income" means the total allocations during an accounting period to income under the terms of a trust and this chapter minus the disbursements during the period, other than distributions, allocated to income under the terms of the trust and this chapter. To the extent the trust is a unitrust under § 28-77-301 et seq., the term means the unitrust amount determined under § 28-77-301 et seq. The term includes an adjustment from principal to income under § 28-77-203. The term does not include an adjustment from income to principal under § 28-77-203.

(14) "Person" means an individual, estate, trust, business or non-profit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(15) "Personal representative" means an executor, administrator, successor personal representative, special administrator, or person that performs substantially the same function with respect to an estate under the law governing the person's status.

(16) "Principal" means property held in trust for distribution to, production of income for, or use by a current or successor beneficiary.

(17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(18) "Settlor" means a person, including a testator, that creates or contributes property to a trust. If more than one person creates or contributes property to a trust, the term includes each person, to the extent of the trust property attributable to that person's contribution, except to the extent another person has the power to revoke or withdraw that portion.

(19) "Special tax benefit" means:

(A) exclusion of a transfer to a trust from gifts described in Section 2503(b) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2503(b), as amended, because of the qualification of an income interest in the trust as a present interest in property;

(B) status as a qualified subchapter S trust described in Section 1361(d)(3) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 1361(d)(3), as amended, at a time the trust holds stock of an S corporation described in Section 1361(a)(1) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 1361(a)(1), as amended;

(C) an estate or gift tax marital deduction for a transfer to a trust under Section 2056 or 2523 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2056 or 2523, as amended, which depends or depended in whole or in part on the right of the settlor's spouse to receive the net income of the trust;

(D) exemption in whole or in part of a trust from the federal generation-skipping transfer tax imposed by Section 2601 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2601, as amended, because the trust was irrevocable on September 25, 1985, if there is any possibility that:

(i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2612(b), as amended, could be made from the trust; or

(ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2612(a), as amended, could occur with respect to the trust; or

(E) an inclusion ratio, as defined in Section 2642(a) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2642(a), as amended, of the trust which is less than one, if there is any possibility that:

(i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2612(b), as amended, could be made from the trust; or

(ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 2612(a), as amended, could occur with respect to the trust.

(20) "Successive interest" means the interest of a successor beneficiary.

(21) "Successor beneficiary" means a person entitled to receive income or principal or to use property when an income interest or other current interest ends.

(22) "Terms of a trust" means:

(A) except as otherwise provided in subparagraph (B), the manifestation of the settlor's intent regarding a trust's provisions as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding;

(B) the trust's provisions as established, determined, or amended by:

- (i) a trustee or trust director in accordance with applicable law;
- (ii) court order; or
- (iii) a nonjudicial settlement agreement under § 28-73-111; or
- (C) for an estate, a will.
- (23) “Trust”:
 - (A) includes:
 - (i) an express trust, private or charitable, with additions to the trust, wherever and however created; and
 - (ii) a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust; and
 - (B) does not include:
 - (i) a constructive trust;
 - (ii) a resulting trust, conservatorship, guardianship, multi-party account, custodial arrangement for a minor, business trust, voting trust, security arrangement, liquidation trust, or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, retirement benefits, or employee benefits of any kind; or
 - (iii) an arrangement under which a person is a nominee, escrowee, or agent for another.
- (24) “Trustee” means a person, other than a personal representative, that owns or holds property for the benefit of a beneficiary. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.
- (25) “Will” means any testamentary instrument recognized by applicable law which makes a legally effective disposition of an individual’s property, effective at the individual’s death. The term includes a codicil or other amendment to a testamentary instrument.

History. Acts 2021, No. 1088, § 2.	differs as adopted in Arkansas.
A.C.R.C. Notes. Section 102 of the Uniform Fiduciary Income and Principal Act	Effective Dates. Acts 2021, No. 1088, § 3: Jan. 1, 2022.

28-77-103. Scope. [Effective January 1, 2022.]

This chapter applies to a trust or estate.

History. Acts 2021, No. 1088, § 2.	sas.
A.C.R.C. Notes. Section 103 of the Uniform Fiduciary Income and Principal Act differs significantly as adopted in Arkan-	Effective Dates. Acts 2021, No. 1088, § 3: Jan. 1, 2022.

28-77-104. Governing law. [Effective January 1, 2022.]

Except as otherwise provided in the terms of a trust or this chapter, this chapter applies when this state is the principal place of administration of a trust or estate. By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration of a trust to this state, the trustee

submits to the application of this chapter to any matter within the scope of this chapter involving the trust.

History. Acts 2021, No. 1088, § 2. differs as adopted in Arkansas.
A.C.R.C. Notes. Section 104 of the Uniform Fiduciary Income and Principal Act **Effective Dates.** Acts 2021, No. 1088, § 3: Jan. 1, 2022.

SUBCHAPTER 2 — FIDUCIARY DUTIES AND JUDICIAL REVIEW [EFFECTIVE JANUARY 1, 2022]

SECTION.	SECTION.
28-77-201. Fiduciary duties — General principles. [Effective January 1, 2022.]	quest for instruction. [Effective January 1, 2022.]
28-77-202. Judicial review of exercise of discretionary power — Re-	28-77-203. Fiduciary's power to adjust. [Effective January 1, 2022.]

28-77-201. Fiduciary duties — General principles. [Effective January 1, 2022.]

(a) In making an allocation or determination or exercising discretion under this chapter, a fiduciary shall:

- (1) act in good faith, based on what is fair and reasonable to all beneficiaries;
- (2) administer a trust or estate impartially, except to the extent the terms of the trust manifest an intent that the fiduciary shall or may favor one or more beneficiaries;
- (3) administer the trust or estate in accordance with the terms of the trust, even if there is a different provision in this chapter; and
- (4) administer the trust or estate in accordance with this chapter, except to the extent the terms of the trust provide otherwise or authorize the fiduciary to determine otherwise.

(b) A fiduciary's allocation, determination, or exercise of discretion under this chapter is presumed to be fair and reasonable to all beneficiaries. A fiduciary may exercise a discretionary power of administration given to the fiduciary by the terms of the trust, and an exercise of the power which produces a result different from a result required or permitted by this chapter does not create an inference that the fiduciary abused the fiduciary's discretion.

(c) A fiduciary shall:

- (1) add a receipt to principal, to the extent neither the terms of the trust nor this chapter allocates the receipt between income and principal; and
- (2) charge a disbursement to principal, to the extent neither the terms of the trust nor this chapter allocates the disbursement between income and principal.

(d) A fiduciary may exercise the power to adjust under § 28-77-203, convert an income trust to a unitrust under § 28-77-303(a)(1), change the percentage or method used to calculate a unitrust amount under § 28-77-303(a)(2), or convert a unitrust to an income trust under

§ 28-77-303(a)(3), if the fiduciary determines the exercise of the power will assist the fiduciary to administer the trust or estate impartially.

(e) Factors the fiduciary must consider in making the determination under subsection (d) include:

- (1) the terms of the trust;
- (2) the nature, distribution standards, and expected duration of the trust;
- (3) the effect of the allocation rules, including specific adjustments between income and principal, under § 28-77-401 et seq. through § 28-77-701 et seq.;
- (4) the desirability of liquidity and regularity of income;
- (5) the desirability of the preservation and appreciation of principal;
- (6) the extent to which an asset is used or may be used by a beneficiary;
- (7) the increase or decrease in the value of principal assets, reasonably determined by the fiduciary;
- (8) whether and to what extent the terms of the trust give the fiduciary power to accumulate income or invade principal or prohibit the fiduciary from accumulating income or invading principal;
- (9) the extent to which the fiduciary has accumulated income or invaded principal in preceding accounting periods;
- (10) the effect of current and reasonably expected economic conditions; and
- (11) the reasonably expected tax consequences of the exercise of the power.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-202. Judicial review of exercise of discretionary power — Request for instruction. [Effective January 1, 2022.]

(a) In this section, “fiduciary decision” means:

(1) a fiduciary’s allocation between income and principal or other determination regarding income and principal required or authorized by the terms of the trust or this chapter;

(2) the fiduciary’s exercise or nonexercise of a discretionary power regarding income and principal granted by the terms of the trust or this chapter, including the power to adjust under § 28-77-203, convert an income trust to a unitrust under § 28-77-303(a)(1), change the percentage or method used to calculate a unitrust amount under § 28-77-303(a)(2), or convert a unitrust to an income trust under § 28-77-303(a)(3); or

(3) the fiduciary’s implementation of a decision described in paragraph (1) or (2).

(b) The court may not order a fiduciary to change a fiduciary decision unless the court determines that the fiduciary decision was an abuse of the fiduciary’s discretion.

(c) If the court determines that a fiduciary decision was an abuse of the fiduciary's discretion, the court may order a remedy authorized by law, including § 28-73-1001. To place the beneficiaries in the positions the beneficiaries would have occupied if there had not been an abuse of the fiduciary's discretion, the court may order:

(1) the fiduciary to exercise or refrain from exercising the power to adjust under § 28-77-203;

(2) the fiduciary to exercise or refrain from exercising the power to convert an income trust to a unitrust under § 28-77-303(a)(1), change the percentage or method used to calculate a unitrust amount under § 28-77-303(a)(2), or convert a unitrust to an income trust under § 28-77-303(a)(3);

(3) the fiduciary to distribute an amount to a beneficiary;

(4) a beneficiary to return some or all of a distribution; or

(5) the fiduciary to withhold an amount from one or more future distributions to a beneficiary.

(d) On petition by a fiduciary for instruction, the court may determine whether a proposed fiduciary decision will result in an abuse of the fiduciary's discretion. If the petition describes the proposed decision, contains sufficient information to inform the beneficiary of the reasons for making the proposed decision and the facts on which the fiduciary relies, and explains how the beneficiary will be affected by the proposed decision, a beneficiary that opposes the proposed decision has the burden to establish that it will result in an abuse of the fiduciary's discretion.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,
§ 3: Jan. 1, 2022.

28-77-203. Fiduciary's power to adjust. [Effective January 1, 2022.]

(a) Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a record, without court approval, may adjust between income and principal if the fiduciary determines the exercise of the power to adjust will assist the fiduciary to administer the trust or estate impartially.

(b) This section does not create a duty to exercise or consider the power to adjust under subsection (a) or to inform a beneficiary about the applicability of this section.

(c) A fiduciary that in good faith exercises or fails to exercise the power to adjust under subsection (a) is not liable to a person affected by the exercise or failure to exercise.

(d) In deciding whether and to what extent to exercise the power to adjust under subsection (a), a fiduciary shall consider all factors the fiduciary considers relevant, including relevant factors in § 28-77-201(e) and the application of § 28-77-401(i), § 28-77-408, and § 28-77-413.

(e) A fiduciary may not exercise the power under subsection (a) to make an adjustment or under § 28-77-408 to make a determination that an allocation is insubstantial if:

(1) the adjustment or determination would reduce the amount payable to a current income beneficiary from a trust that qualifies for a special tax benefit, except to the extent the adjustment is made to provide for a reasonable apportionment of the total return of the trust between the current income beneficiary and successor beneficiaries;

(2) the adjustment or determination would change the amount payable to a beneficiary, as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;

(3) the adjustment or determination would reduce an amount that is permanently set aside for a charitable purpose under the terms of the trust, unless both income and principal are set aside for the charitable purpose;

(4) possessing or exercising the power would cause a person to be treated as the owner of all or part of the trust for federal income tax purposes;

(5) possessing or exercising the power would cause all or part of the value of the trust assets to be included in the gross estate of an individual for federal estate tax purposes;

(6) possessing or exercising the power would cause an individual to be treated as making a gift for federal gift tax purposes;

(7) the fiduciary is not an independent person;

(8) the trust is irrevocable and provides for income to be paid to the settlor and possessing or exercising the power would cause the adjusted principal or income to be considered an available resource or available income under a public-benefit program; or

(9) the trust is a unitrust under § 28-77-301 et seq.

(f) If subsection (e)(4), (5), (6), or (7) applies to a fiduciary:

(1) a co-fiduciary to which subsection (e)(4) through (7) does not apply may exercise the power to adjust, unless the exercise of the power by the remaining co-fiduciary or co-fiduciaries is not permitted by the terms of the trust or law other than this chapter; or

(2) if there is no co-fiduciary to which subsection (e)(4) through (7) does not apply, the fiduciary may appoint a co-fiduciary to which subsection (e)(4) through (7) does not apply, which may be a special fiduciary with limited powers, and the appointed co-fiduciary may exercise the power to adjust under subsection (a), unless the appointment of a co-fiduciary or the exercise of the power by a co-fiduciary is not permitted by the terms of the trust or law other than this chapter.

(g) A fiduciary may release or delegate to a co-fiduciary the power to adjust under subsection (a) if the fiduciary determines that the fiduciary's possession or exercise of the power will or may:

(1) cause a result described in subsection (e)(1) through (6) or (8); or

(2) deprive the trust of a tax benefit or impose a tax burden not described in subsection (e)(1) through (6).

(h) A fiduciary's release or delegation to a co-fiduciary under subsection (g) of the power to adjust under subsection (a):

- (1) must be in a record;
- (2) applies to the entire power, unless the release or delegation provides a limitation, which may be a limitation to the power to adjust:
 - (A) from income to principal;
 - (B) from principal to income;
 - (C) for specified property; or
 - (D) in specified circumstances;
- (3) for a delegation, may be modified by a re-delegation under this subsection by the co-fiduciary to which the delegation is made; and
- (4) subject to paragraph (3), is permanent, unless the release or delegation provides a specified period, including a period measured by the life of an individual or the lives of more than one individual.
- (i) Terms of a trust which deny or limit the power to adjust between income and principal do not affect the application of this section, unless the terms of the trust expressly deny or limit the power to adjust under subsection (a).
- (j) The exercise of the power to adjust under subsection (a) in any accounting period may apply to the current period, the immediately preceding period, and one or more subsequent periods.
- (k) A description of the exercise of the power to adjust under subsection (a) must be:
 - (1) included in a report, if any, sent to beneficiaries under § 28-73-813(c); or
 - (2) communicated at least annually to the qualified beneficiaries determined under § 28-73-103(14), other than all beneficiaries that receive or are entitled to receive income from the trust or would be entitled to receive a distribution of principal if the trust were terminated at the time the notice is sent, assuming no power of appointment is exercised.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,
§ 3: Jan. 1, 2022.

SUBCHAPTER 3 — UNITRUST [EFFECTIVE JANUARY 1, 2022]

SECTION.

- 28-77-301. Definitions. [Effective January 1, 2022.]
- 28-77-302. Application — Duties and remedies. [Effective January 1, 2022.]
- 28-77-303. Authority of fiduciary. [Effective January 1, 2022.]
- 28-77-304. Notice. [Effective January 1, 2022.]
- 28-77-305. Unitrust policy. [Effective January 1, 2022.]

SECTION.

- 28-77-306. Unitrust rate. [Effective January 1, 2022.]
- 28-77-307. Applicable value. [Effective January 1, 2022.]
- 28-77-308. Period. [Effective January 1, 2022.]
- 28-77-309. Special tax benefits — Other rules. [Effective January 1, 2022.]

28-77-301. Definitions. [Effective January 1, 2022.]

In this subchapter:

- (1) “Applicable value” means the amount of the net fair market value of a trust taken into account under § 28-77-307.
- (2) “Express unitrust” means a trust for which, under the terms of the trust without regard to this subchapter, income or net income must or may be calculated as a unitrust amount.
- (3) “Income trust” means a trust that is not a unitrust.
- (4) “Net fair market value of a trust” means the fair market value of the assets of the trust, less the noncontingent liabilities of the trust.
- (5) “Unitrust” means a trust for which net income is a unitrust amount. The term includes an express unitrust.
- (6) “Unitrust amount” means an amount computed by multiplying a determined value of a trust by a determined percentage. For a unitrust administered under a unitrust policy, the term means the applicable value, multiplied by the unitrust rate.
- (7) “Unitrust policy” means a policy described in §§ 28-77-305 through 28-77-309 and adopted under § 28-77-303.
- (8) “Unitrust rate” means the rate used to compute the unitrust amount under paragraph (6) for a unitrust administered under a unitrust policy.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,
§ 3: Jan. 1, 2022.

28-77-302. Application — Duties and remedies. [Effective January 1, 2022.]

(a) Except as otherwise provided in subsection (b), this subchapter applies to:

(1) an income trust, unless the terms of the trust expressly prohibit use of this subchapter by a specific reference to this subchapter or an explicit expression of intent that net income not be calculated as a unitrust amount; and

(2) an express unitrust, except to the extent the terms of the trust explicitly:

(A) prohibit use of this subchapter by a specific reference to this subchapter;

(B) prohibit conversion to an income trust; or

(C) limit changes to the method of calculating the unitrust amount.

(b) This subchapter does not apply to a trust described in Section 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b), as amended.

(c) An income trust to which this subchapter applies under subsection (a)(1) may be converted to a unitrust under this subchapter

regardless of the terms of the trust concerning distributions. Conversion to a unitrust under this subchapter does not affect other terms of the trust concerning distributions of income or principal.

(d) This subchapter applies to an estate only to the extent a trust is a beneficiary of the estate. To the extent of the trust's interest in the estate, the estate may be administered as a unitrust, the administration of the estate as a unitrust may be discontinued, or the percentage or method used to calculate the unitrust amount may be changed, in the same manner as for a trust under this subchapter.

(e) This subchapter does not create a duty to take or consider action under this subchapter or to inform a beneficiary about the applicability of this subchapter.

(f) A fiduciary that in good faith takes or fails to take an action under this subchapter is not liable to a person affected by the action or inaction.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-303. Authority of fiduciary. [Effective January 1, 2022.]

(a) A fiduciary, without court approval, by complying with subsections (b) and (f), may:

(1) convert an income trust to a unitrust if the fiduciary adopts in a record a unitrust policy for the trust providing:

(A) that in administering the trust the net income of the trust will be a unitrust amount rather than net income determined without regard to this subchapter; and

(B) the percentage and method used to calculate the unitrust amount;

(2) change the percentage or method used to calculate a unitrust amount for a unitrust if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a unitrust policy providing changes in the percentage or method used to calculate the unitrust amount; or

(3) convert a unitrust to an income trust if the fiduciary adopts in a record a determination that, in administering the trust, the net income of the trust will be net income determined without regard to this subchapter rather than a unitrust amount.

(b) A fiduciary may take an action under subsection (a) if:

(1) the fiduciary determines that the action will assist the fiduciary to administer a trust impartially;

(2) the fiduciary sends a notice in a record, in the manner required by § 28-77-304, describing and proposing to take the action;

(3) the fiduciary sends a copy of the notice under paragraph (2) to each settlor of the trust which is:

(A) if an individual, living; or

(B) if not an individual, in existence;

(4) at least one member of each class of the qualified beneficiaries determined under § 28-73-103, other than the Attorney General, receiving the notice under paragraph (2) is:

(A) if an individual, legally competent;

(B) if not an individual, in existence; or

(C) represented in the manner provided in § 28-77-304(b); and

(5) the fiduciary does not receive, by the date specified in the notice under § 28-77-304(d)(5), an objection in a record to the action proposed under paragraph (2) from a person to which the notice under paragraph (2) is sent.

(c) If a fiduciary receives, not later than the date stated in the notice under § 28-77-304(d)(5), an objection in a record described in § 28-77-304(d)(4) to a proposed action, the fiduciary or a beneficiary may request the court to have the proposed action taken as proposed, taken with modifications, or prevented. A person described in § 28-77-304(a) may oppose the proposed action in the proceeding under this subsection, whether or not the person:

(1) consented under § 28-77-304(c); or

(2) objected under § 28-77-304(d)(4).

(d) If, after sending a notice under subsection (b)(2), a fiduciary decides not to take the action proposed in the notice, the fiduciary shall notify in a record each person described in § 28-77-304(a) of the decision not to take the action and the reasons for the decision.

(e) If a beneficiary requests in a record that a fiduciary take an action described in subsection (a) and the fiduciary declines to act or does not act within 90 days after receiving the request, the beneficiary may request the court to direct the fiduciary to take the action requested.

(f) In deciding whether and how to take an action authorized by subsection (a), or whether and how to respond to a request by a beneficiary under subsection (e), a fiduciary shall consider all factors relevant to the trust and the beneficiaries, including relevant factors in § 28-77-201(e).

(g) A fiduciary may release or delegate the power to convert an income trust to a unitrust under subsection (a)(1), change the percentage or method used to calculate a unitrust amount under subsection (a)(2), or convert a unitrust to an income trust under subsection (a)(3), for a reason described in § 28-77-203(g) and in the manner described in § 28-77-203(h).

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-304. Notice. [Effective January 1, 2022.]

(a) A notice required by § 28-77-303(b)(2) must be sent in a manner authorized under § 28-73-109 to:

(1) the qualified beneficiaries determined under § 28-73-103, other than the Attorney General; and

(2) each person acting as trust director of the trust under the Uniform Directed Trust Act, § 28-76-101 et seq.

(b) The representation provisions of §§ 28-73-301 — 28-73-305 apply to notice under this section.

(c) A person may consent in a record at any time to action proposed under § 28-77-303(b)(2). A notice required by § 28-77-303(b)(2) need not be sent to a person that consents under this subsection.

(d) A notice required by § 28-77-303(b)(2) must include:

(1) the action proposed under § 28-77-303(b)(2);

(2) for a conversion of an income trust to a unitrust, a copy of the unitrust policy adopted under § 28-77-303(a)(1);

(3) for a change in the percentage or method used to calculate the unitrust amount, a copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under § 28-77-303(a)(2);

(4) a statement that the person to which the notice is sent may object to the proposed action by stating in a record the basis for the objection and sending or delivering the record to the fiduciary;

(5) the date by which an objection under paragraph (4) must be received by the fiduciary, which must be at least 30 days after the date the notice is sent;

(6) the date on which the action is proposed to be taken and the date on which the action is proposed to take effect;

(7) the name and contact information of the fiduciary; and

(8) the name and contact information of a person that may be contacted for additional information.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-305. Unitrust policy. [Effective January 1, 2022.]

(a) In administering a unitrust under this subchapter, a fiduciary shall follow a unitrust policy adopted under § 28-77-303(a)(1) or § 28-77-303(a)(2) or amended or replaced under § 28-77-303(a)(2).

(b) A unitrust policy must provide:

(1) the unitrust rate or the method for determining the unitrust rate under § 28-77-306;

(2) the method for determining the applicable value under § 28-77-307; and

(3) the rules described in §§ 28-77-306 through 28-77-309 which apply in the administration of the unitrust, whether the rules are:

(A) mandatory, as provided in § 28-77-307(a) and § 28-77-308(a);
or

(B) optional, as provided in § 28-77-306, § 28-77-307(b), § 28-77-308(b), and § 28-77-309(a), to the extent the fiduciary elects to adopt those rules.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-306. Unitrust rate. [Effective January 1, 2022.]

(a) Except as otherwise provided in § 28-77-309(b)(1), a unitrust rate may be:

(1) a fixed unitrust rate; or

(2) a unitrust rate that is determined for each period using:

(A) a market index or other published data; or

(B) a mathematical blend of market indices or other published data over a stated number of preceding periods.

(b) Except as otherwise provided in § 28-77-309(b)(1), a unitrust policy may provide:

(1) a limit on how high the unitrust rate determined under subsection (a)(2) may rise;

(2) a limit on how low the unitrust rate determined under subsection (a)(2) may fall;

(3) a limit on how much the unitrust rate determined under subsection (a)(2) may increase over the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods;

(4) a limit on how much the unitrust rate determined under subsection (a)(2) may decrease below the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods; or

(5) a mathematical blend of any of the unitrust rates determined under subsection (a)(2) and paragraphs (1) through (4).

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-307. Applicable value. [Effective January 1, 2022.]

(a) A unitrust policy must provide the method for determining the fair market value of an asset for the purpose of determining the unitrust amount, including:

(1) the frequency of valuing the asset, which need not require a valuation in every period; and

(2) the date for valuing the asset in each period in which the asset is valued.

(b) Except as otherwise provided in § 28-77-309(b)(2), a unitrust policy may provide methods for determining the amount of the net fair market value of the trust to take into account in determining the applicable value, including:

(1) obtaining an appraisal of an asset for which fair market value is not readily available;

(2) exclusion of specific assets or groups or types of assets;

(3) other exceptions or modifications of the treatment of specific assets or groups or types of assets;

(4) identification and treatment of cash or property held for distribution;

(5) use of:

(A) an average of fair market values over a stated number of preceding periods; or

(B) another mathematical blend of fair market values over a stated number of preceding periods;

(6) a limit on how much the applicable value of all assets, groups of assets, or individual assets may increase over:

(A) the corresponding applicable value for the preceding period; or

(B) a mathematical blend of applicable values over a stated number of preceding periods;

(7) a limit on how much the applicable value of all assets, groups of assets, or individual assets may decrease below:

(A) the corresponding applicable value for the preceding period; or

(B) a mathematical blend of applicable values over a stated number of preceding periods;

(8) the treatment of accrued income and other features of an asset which affect value; and

(9) determining the liabilities of the trust, including treatment of liabilities to conform with the treatment of assets under paragraphs (1) through (8).

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,
§ 3: Jan. 1, 2022.

28-77-308. Period. [Effective January 1, 2022.]

(a) A unitrust policy must provide the period used under §§ 28-77-306 and 28-77-307. Except as otherwise provided in § 28-77-309(b)(3), the period may be:

(1) a calendar year;

(2) a 12-month period other than a calendar year;

(3) a calendar quarter;

(4) a three-month period other than a calendar quarter; or

(5) another period.

(b) Except as otherwise provided in § 28-77-309(b), a unitrust policy may provide standards for:

(1) using fewer preceding periods under § 28-77-306(a)(2)(B) or § 28-77-306(b)(3) or § 28-77-306(b)(4) if:

(A) the trust was not in existence in a preceding period; or

(B) market indices or other published data are not available for a preceding period;

- (2) using fewer preceding periods under § 28-77-307(b)(5)(A) or § 28-77-307(b)(5)(B), § 28-77-307(b)(6)(B), or § 28-77-307(b)(7)(B) if:
- (A) the trust was not in existence in a preceding period; or
 - (B) fair market values are not available for a preceding period; and
- (3) prorating the unitrust amount on a daily basis for a part of a period in which the trust or the administration of the trust as a unitrust or the interest of any beneficiary commences or terminates.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-309. Special tax benefits — Other rules. [Effective January 1, 2022.]

- (a) A unitrust policy may:
- (1) provide methods and standards for:
 - (A) determining the timing of distributions;
 - (B) making distributions in cash or in kind or partly in cash and partly in kind; or
 - (C) correcting an underpayment or overpayment to a beneficiary based on the unitrust amount if there is an error in calculating the unitrust amount;
 - (2) specify sources and the order of sources, including categories of income for federal income tax purposes, from which distributions of a unitrust amount are paid; or
 - (3) provide other standards and rules the fiduciary determines serve the interests of the beneficiaries.
- (b) If a trust qualifies for a special tax benefit or a fiduciary is not an independent person:
- (1) the unitrust rate established under § 28-77-306 may not be less than three percent or more than five percent;
 - (2) the only provisions of § 28-77-307 which apply are § 28-77-307(a) and § 28-77-307(b)(1), § 28-77-307(b)(4), § 28-77-307(b)(5)(A), and § 28-77-307(b)(9);
 - (3) the only period that may be used under § 28-77-308 is a calendar year under § 28-77-308(a)(1); and
 - (4) the only other provisions of § 28-77-308 which apply are § 28-77-308(b)(2)(A) and § 28-77-308(b)(3).

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

SUBCHAPTER 4 — ALLOCATION OF RECEIPTS [EFFECTIVE JANUARY 1, 2022]**Part 1. Receipts From Entity.
[Effective January 1, 2022.]**

SECTION.

- 28-77-401. Character of receipts from entity. [Effective January 1, 2022.]
- 28-77-402. Distribution from trust or estate. [Effective January 1, 2022.]
- 28-77-403. Business or other activity conducted by fiduciary. [Effective January 1, 2022.]

**Part 2. Receipts Not Normally
Apportioned. [Effective
January 1, 2022.]**

SECTION.

- 28-77-404. Principal receipts. [Effective January 1, 2022.]
- 28-77-405. Rental property. [Effective January 1, 2022.]
- 28-77-406. Receipt on obligation to be paid in money. [Effective January 1, 2022.]
- 28-77-407. Insurance policy or contract. [Effective January 1, 2022.]

**Part 3. Receipts Normally
Apportioned. [Effective
January 1, 2022.]**

SECTION.

- 28-77-408. Insubstantial allocation not

SECTION.

- required. [Effective January 1, 2022.]
- 28-77-409. Deferred compensation, annuity, or similar payment. [Effective January 1, 2022.]
- 28-77-410. Liquidating asset. [Effective January 1, 2022.]
- 28-77-411. Minerals, water, and other natural resources. [Effective January 1, 2022.]
- 28-77-412. Timber. [Effective January 1, 2022.]
- 28-77-413. Marital deduction property not productive of income. [Effective January 1, 2022.]
- 28-77-414. Derivative or option. [Effective January 1, 2022.]
- 28-77-415. Asset-backed security. [Effective January 1, 2022.]
- 28-77-416. Other financial instrument or arrangement. [Effective January 1, 2022.]

PART 1 — RECEIPTS FROM ENTITY [EFFECTIVE JANUARY 1, 2022]**28-77-401. Character of receipts from entity. [Effective January 1, 2022.]**

(a) In this section:

(1) “Capital distribution” means an entity distribution of money which is a:

(A) return of capital; or

(B) distribution in total or partial liquidation of the entity.

(2) “Entity”:

(A) means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization or arrangement in which a fiduciary owns or holds an interest, whether or not the entity is a taxpayer for federal income tax purposes; and

(B) does not include:

- (i) a trust or estate to which § 28-77-402 applies;
- (ii) a business or other activity to which § 28-77-403 applies which is not conducted by an entity described in subparagraph (A);
- (iii) an asset-backed security; or
- (iv) an instrument or arrangement to which § 28-77-416 applies.

(3) "Entity distribution" means a payment or transfer by an entity made to a person in the person's capacity as an owner or holder of an interest in the entity.

(b) In this section, an attribute or action of an entity includes an attribute or action of any other entity in which the entity owns or holds an interest, including an interest owned or held indirectly through another entity.

(c) Except as otherwise provided in subsection (d)(2) through (4), a fiduciary shall allocate to income:

- (1) money received in an entity distribution; and
- (2) tangible personal property of nominal value received from the entity.

(d) A fiduciary shall allocate to principal:

- (1) property received in an entity distribution which is not:
 - (A) money; or
 - (B) tangible personal property of nominal value;
- (2) money received in an entity distribution in an exchange for part or all of the fiduciary's interest in the entity, to the extent the entity distribution reduces the fiduciary's interest in the entity relative to the interests of other persons that own or hold interests in the entity;
- (3) money received in an entity distribution that the fiduciary determines or estimates is a capital distribution; and
- (4) money received in an entity distribution from an entity that is:
 - (A) a regulated investment company or real estate investment trust if the money received is a capital gain dividend for federal income tax purposes; or
 - (B) treated for federal income tax purposes comparably to the treatment described in subparagraph (A).

(e) A fiduciary may determine or estimate that money received in an entity distribution is a capital distribution:

(1) by relying without inquiry or investigation on a characterization of the entity distribution provided by or on behalf of the entity, unless the fiduciary:

(A) determines, on the basis of information known to the fiduciary, that the characterization is or may be incorrect; or

(B) owns or holds more than 50 percent of the voting interest in the entity;

(2) by determining or estimating, on the basis of information known to the fiduciary or provided to the fiduciary by or on behalf of the entity, that the total amount of money and property received by the fiduciary in the entity distribution or a series of related entity distributions is or will be greater than 20 percent of the fair market value of the fiduciary's interest in the entity; or

(3) if neither paragraph (1) nor (2) applies, by considering the factors in subsection (f) and the information known to the fiduciary or provided to the fiduciary by or on behalf of the entity.

(f) In making a determination or estimate under subsection (e)(3), a fiduciary may consider:

(1) a characterization of an entity distribution provided by or on behalf of the entity;

(2) the amount of money or property received in:

(A) the entity distribution; or

(B) what the fiduciary determines is or will be a series of related entity distributions;

(3) the amount described in paragraph (2) compared to the amount the fiduciary determines or estimates is, during the current or preceding accounting periods:

(A) the entity's operating income;

(B) the proceeds of the entity's sale or other disposition of:

(i) all or part of the business or other activity conducted by the entity;

(ii) one or more business assets that are not sold to customers in the ordinary course of the business or other activity conducted by the entity; or

(iii) one or more assets other than business assets, unless the entity's primary activity is to invest in assets to realize gain on the disposition of all or some of the assets;

(C) if the entity's primary activity is to invest in assets to realize gain on the disposition of all or some of the assets, the gain realized on the disposition;

(D) the entity's regular, periodic entity distributions;

(E) the amount of money the entity has accumulated;

(F) the amount of money the entity has borrowed;

(G) the amount of money the entity has received from the sources described in §§ 28-77-407, 28-77-410, 28-77-411, and 28-77-412; and

(H) the amount of money the entity has received from a source not otherwise described in this paragraph; and

(4) any other factor the fiduciary determines is relevant.

(g) If, after applying subsections (c) through (f), a fiduciary determines that a part of an entity distribution is a capital distribution but is in doubt about the amount of the entity distribution which is a capital distribution, the fiduciary shall allocate to principal the amount of the entity distribution which is in doubt.

(h) If a fiduciary receives additional information about the application of this section to an entity distribution before the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary may consider the additional information before making the payment to the beneficiary and may change a decision to make the payment to the beneficiary.

(i) If a fiduciary receives additional information about the application of this section to an entity distribution after the fiduciary has paid

part of the entity distribution to a beneficiary, the fiduciary is not required to change or recover the payment to the beneficiary but may consider that information in determining whether to exercise the power to adjust under § 28-77-203.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-402. Distribution from trust or estate. [Effective January 1, 2022.]

A fiduciary shall allocate to income an amount received as a distribution of income, including a unitrust distribution under § 28-77-301 et seq., from a trust or estate in which the fiduciary has an interest, other than an interest the fiduciary purchased in a trust that is an investment entity, and shall allocate to principal an amount received as a distribution of principal from the trust or estate. If a fiduciary purchases, or receives from a settlor, an interest in a trust that is an investment entity, § 28-77-401, § 28-77-415, or § 28-77-416 applies to a receipt from the trust.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-403. Business or other activity conducted by fiduciary. [Effective January 1, 2022.]

(a) This section applies to a business or other activity conducted by a fiduciary if the fiduciary determines that it is in the interests of the beneficiaries to account separately for the business or other activity instead of:

(1) accounting for the business or other activity as part of the fiduciary's general accounting records; or

(2) conducting the business or other activity through an entity described in § 28-77-401(a)(2)(A).

(b) A fiduciary may account separately under this section for the transactions of a business or other activity, whether or not assets of the business or other activity are segregated from other assets held by the fiduciary.

(c) A fiduciary that accounts separately under this section for a business or other activity:

(1) may determine:

(A) the extent to which the net cash receipts of the business or other activity must be retained for:

(i) working capital;

(ii) the acquisition or replacement of fixed assets; and

(iii) other reasonably foreseeable needs of the business or other activity; and

(B) the extent to which the remaining net cash receipts are accounted for as principal or income in the fiduciary's general accounting records for the trust;

(2) may make a determination under paragraph (1) separately and differently from the fiduciary's decisions concerning distributions of income or principal; and

(3) shall account for the net amount received from the sale of an asset of the business or other activity, other than a sale in the ordinary course of the business or other activity, as principal in the fiduciary's general accounting records for the trust, to the extent the fiduciary determines that the net amount received is no longer required in the conduct of the business or other activity.

(d) Activities for which a fiduciary may account separately under this section include:

(1) retail, manufacturing, service, and other traditional business activities;

(2) farming;

(3) raising and selling livestock and other animals;

(4) managing rental properties;

(5) extracting minerals, water, and other natural resources;

(6) growing and cutting timber;

(7) an activity to which § 28-77-414, § 28-77-415, or § 28-77-416 applies; and

(8) any other business conducted by the fiduciary.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

PART 2 — RECEIPTS NOT NORMALLY APPORTIONED [EFFECTIVE JANUARY 1, 2022]

28-77-404. Principal receipts. [Effective January 1, 2022.]

A fiduciary shall allocate to principal:

(1) to the extent not allocated to income under this chapter, an asset received from:

(A) an individual during the individual's lifetime;

(B) an estate;

(C) a trust on termination of an income interest; or

(D) a payor under a contract naming the fiduciary as beneficiary;

(2) except as otherwise provided in this subchapter, money or other property received from the sale, exchange, liquidation, or change in form of a principal asset;

(3) an amount recovered from a third party to reimburse the fiduciary because of a disbursement described in § 28-77-502(a) or for another reason to the extent not based on loss of income;

(4) proceeds of property taken by eminent domain, except that proceeds awarded for loss of income in an accounting period are income

if a current income beneficiary had a mandatory income interest during the period;

(5) net income received in an accounting period during which there is no beneficiary to which a fiduciary may or must distribute income; and

(6) other receipts as provided in Part 3.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-405. Rental property. [Effective January 1, 2022.]

To the extent a fiduciary does not account for the management of rental property as a business under § 28-77-403, the fiduciary shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods:

(1) must be added to principal and held subject to the terms of the lease, except as otherwise provided by law other than this chapter; and

(2) is not allocated to income or available for distribution to a beneficiary until the fiduciary's contractual obligations have been satisfied with respect to that amount.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-406. Receipt on obligation to be paid in money. [Effective January 1, 2022.]

(a) This section does not apply to an obligation to which § 28-77-409, § 28-77-410, § 28-77-411, § 28-77-412, § 28-77-414, § 28-77-415, or § 28-77-416 applies.

(b) A fiduciary shall allocate to income, without provision for amortization of premium, an amount received as interest on an obligation to pay money to the fiduciary, including an amount received as consideration for prepaying principal.

(c) A fiduciary shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the fiduciary. A fiduciary shall allocate to income the increment in value of a bond or other obligation for the payment of money bearing no stated interest but payable or redeemable, at maturity or another future time, in an amount that exceeds the amount in consideration of which it was issued.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-407. Insurance policy or contract. [Effective January 1, 2022.]

(a) This section does not apply to a contract to which § 28-77-409 applies.

(b) Except as otherwise provided in subsection (c), a fiduciary shall allocate to principal the proceeds of a life insurance policy or other contract received by the fiduciary as beneficiary, including a contract that insures against damage to, destruction of, or loss of title to an asset. The fiduciary shall allocate dividends on an insurance policy to income to the extent premiums on the policy are paid from income and to principal to the extent premiums on the policy are paid from principal.

(c) A fiduciary shall allocate to income proceeds of a contract that insures the fiduciary against loss of:

- (1) occupancy or other use by a current income beneficiary;
- (2) income; or
- (3) subject to § 28-77-403, profits from a business.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

PART 3 — RECEIPTS NORMALLY APPORTIONED [EFFECTIVE JANUARY 1, 2022]**28-77-408. Insubstantial allocation not required. [Effective January 1, 2022.]**

(a) If a fiduciary determines that an allocation between income and principal required by § 28-77-409, § 28-77-410, § 28-77-411, § 28-77-412, or § 28-77-415 is insubstantial, the fiduciary may allocate the entire amount to principal, unless § 28-77-203(e) applies to the allocation.

(b) A fiduciary may presume an allocation is insubstantial under subsection (a) if:

(1) the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; and

(2) the asset producing the receipt to be allocated has a fair market value less than 10 percent of the total fair market value of the assets owned or held by the fiduciary at the beginning of the accounting period.

(c) The power to make a determination under subsection (a) may be:

(1) exercised by a co-fiduciary in the manner described in § 28-77-203(f); or

(2) released or delegated for a reason described in § 28-77-203(g) and in the manner described in § 28-77-203(h).

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

**28-77-409. Deferred compensation, annuity, or similar payment.
[Effective January 1, 2022.]**

(a) In this section:

(1) “Internal income of a separate fund” means the amount determined under subsection (b).

(2) “Marital trust” means a trust:

(A) of which the settlor’s surviving spouse is the only current income beneficiary and is entitled to a distribution of all the current net income of the trust; and

(B) that qualifies for a marital deduction with respect to the settlor’s estate under Section 2056 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2056, as amended, because:

(i) an election to qualify for a marital deduction under Section 2056(b)(7) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2056(b)(7), as amended, has been made; or

(ii) the trust qualifies for a marital deduction under Section 2056(b)(5) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 2056(b)(5), as amended.

(3) “Payment” means an amount a fiduciary may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future amounts the fiduciary may receive. The term includes an amount received in money or property from the payor’s general assets or from a separate fund created by the payor.

(4) “Separate fund” includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) For each accounting period, the following rules apply to a separate fund:

(1) The fiduciary shall determine the internal income of the separate fund as if the separate fund were a trust subject to this chapter.

(2) If the fiduciary cannot determine the internal income of the separate fund under paragraph (1), the internal income of the separate fund is deemed to equal three percent of the value of the separate fund, according to the most recent statement of value preceding the beginning of the accounting period.

(3) If the fiduciary cannot determine the value of the separate fund under paragraph (2), the value of the separate fund is deemed to equal the present value of the expected future payments, as determined under Section 7520 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. Section 7520, as amended, for the month preceding the beginning of the accounting period for which the computation is made.

(c) A fiduciary shall allocate a payment received from a separate fund during an accounting period to income, to the extent of the internal

income of the separate fund during the period, and the balance to principal.

(d) The fiduciary of a marital trust shall:

(1) withdraw from a separate fund the amount the current income beneficiary of the trust requests the fiduciary to withdraw, not greater than the amount by which the internal income of the separate fund during the accounting period exceeds the amount the fiduciary otherwise receives from the separate fund during the period;

(2) transfer from principal to income the amount the current income beneficiary requests the fiduciary to transfer, not greater than the amount by which the internal income of the separate fund during the period exceeds the amount the fiduciary receives from the separate fund during the period after the application of paragraph (1); and

(3) distribute to the current income beneficiary as income:

(A) the amount of the internal income of the separate fund received or withdrawn during the period; and

(B) the amount transferred from principal to income under paragraph (2).

(e) For a trust, other than a marital trust, of which one or more current income beneficiaries are entitled to a distribution of all the current net income, the fiduciary shall transfer from principal to income the amount by which the internal income of a separate fund during the accounting period exceeds the amount the fiduciary receives from the separate fund during the period.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-410. Liquidating asset. [Effective January 1, 2022.]

(a) In this section, “liquidating asset” means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a limited time. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance.

(b) This section does not apply to a receipt subject to § 28-77-401, § 28-77-409, § 28-77-411, § 28-77-412, § 28-77-414, § 28-77-415, § 28-77-416, or § 28-77-503.

(c) A fiduciary shall allocate:

(1) to income:

(A) a receipt produced by a liquidating asset, to the extent the receipt does not exceed five percent of the value of the asset; or

(B) if the fiduciary cannot determine the value of the asset, 10 percent of the receipt; and

(2) to principal, the balance of the receipt.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-411. Minerals, water, and other natural resources. [Effective January 1, 2022.]

(a) To the extent that a fiduciary accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the fiduciary shall allocate them as follows:

(1) if received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

(2) if received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(3) if an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90 percent must be allocated to principal and the balance to income.

(4) if an amount is received from a working interest or any other interest not provided for in paragraph (1), (2), or (3), 90 percent of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90 percent of the amount must be allocated to principal and the balance to income.

(c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on or before January 1, 2022, the fiduciary may allocate receipts from the interest as provided in this chapter or in the manner used by the fiduciary before January 1, 2022. If the trust acquires an interest in minerals, water, or other natural resources after January 1, 2022, the fiduciary shall allocate receipts from the interest as provided in this chapter.

History. Acts 2021, No. 1088, § 2.

Arkansas.

A.C.R.C. Notes. Section 411 of the Uniform Fiduciary Income and Principal Act differs substantially as adopted in

Effective Dates. Acts 2021, No. 1088,
§ 3: Jan. 1, 2022.

28-77-412. Timber. [Effective January 1, 2022.]

(a) To the extent a fiduciary does not account for receipts from the sale of timber and related products as a business under § 28-77-403, the fiduciary shall allocate the net receipts:

(1) to income, to the extent the amount of timber cut from the land does not exceed the rate of growth of the timber;

(2) to principal, to the extent the amount of timber cut from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) between income and principal if the net receipts are from the lease of land used for growing and cutting timber or from a contract to cut timber from land, by determining the amount of timber cut from the land under the lease or contract and applying the rules in paragraphs (1) and (2); or

(4) to principal, to the extent advance payments, bonuses, and other payments are not allocated under paragraph (1), (2), or (3).

(b) In determining net receipts to be allocated under subsection (a), a fiduciary shall deduct and transfer to principal a reasonable amount for depletion.

(c) This section applies to land owned or held by a fiduciary whether or not a settlor was cutting timber from the land before the fiduciary owned or held the property.

(d) If a fiduciary owns or holds an interest in land used for growing and cutting timber before January 1, 2022, the fiduciary may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the fiduciary before January 1, 2022. If the fiduciary acquires an interest in land used for growing and cutting timber on or after January 1, 2022, the fiduciary shall allocate net receipts from the sale of timber and related products as provided in this section.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-413. Marital deduction property not productive of income. [Effective January 1, 2022.]

(a) If a trust received property for which a gift or estate tax marital deduction was allowed and the settlor's spouse holds a mandatory income interest in the trust, the spouse may require the trustee, to the extent the trust assets otherwise do not provide the spouse with sufficient income from or use of the trust assets to qualify for the deduction, to:

(1) make property productive of income;

(2) convert property to property productive of income within a reasonable time; or

(3) exercise the power to adjust under § 28-77-203.

(b) The trustee may decide which action or combination of actions in subsection (a) to take.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-414. Derivative or option. [Effective January 1, 2022.]

(a) In this section, “derivative” means a contract, instrument, other arrangement, or combination of contracts, instruments, or other arrangements, the value, rights, and obligations of which are, in whole or in part, dependent on or derived from an underlying tangible or intangible asset, group of tangible or intangible assets, index, or occurrence of an event. The term includes stocks, fixed income securities, and financial instruments and arrangements based on indices, commodities, interest rates, weather-related events, and credit-default events.

(b) To the extent a fiduciary does not account for a transaction in derivatives as a business under § 28-77-403, the fiduciary shall allocate 10 percent of receipts from the transaction and 10 percent of disbursements made in connection with the transaction to income and the balance to principal.

(c) Subsection (d) applies if:

(1) a fiduciary:

(A) grants an option to buy property from a trust, whether or not the trust owns the property when the option is granted;

(B) grants an option that permits another person to sell property to the trust; or

(C) acquires an option to buy property for the trust or an option to sell an asset owned by the trust; and

(2) the fiduciary or other owner of the asset is required to deliver the asset if the option is exercised.

(d) If this subsection applies, the fiduciary shall allocate 10 percent to income and the balance to principal of the following amounts:

(1) an amount received for granting the option;

(2) an amount paid to acquire the option; and

(3) gain or loss realized on the exercise, exchange, settlement, offset, closing, or expiration of the option.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-415. Asset-backed security. [Effective January 1, 2022.]

(a) Except as otherwise provided in subsection (b), a fiduciary shall allocate to income a receipt from or related to an asset-backed security, to the extent the payor identifies the payment as being from interest or other current return, and to principal the balance of the receipt.

(b) If a fiduciary receives one or more payments in exchange for part or all of the fiduciary’s interest in an asset-backed security, including a liquidation or redemption of the fiduciary’s interest in the security, the fiduciary shall allocate to income 10 percent of receipts from the transaction and 10 percent of disbursements made in connection with the transaction, and to principal the balance of the receipts and disbursements.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-416. Other financial instrument or arrangement. [Effective January 1, 2022.]

A fiduciary shall allocate receipts from or related to a financial instrument or arrangement not otherwise addressed by this chapter. The allocation must be consistent with §§ 28-77-414 and 28-77-415.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

SUBCHAPTER 5 — ALLOCATION OF DISBURSEMENTS [EFFECTIVE JANUARY 1, 2022]

SECTION.

28-77-501. Disbursement from income. [Effective January 1, 2022.]

28-77-502. Disbursement from principal. [Effective January 1, 2022.]

28-77-503. Transfer from income to principal for depreciation. [Effective January 1, 2022.]

28-77-504. Reimbursement of income from principal. [Effective January 1, 2022.]

SECTION.

28-77-505. Reimbursement of principal from income. [Effective January 1, 2022.]

28-77-506. Income taxes. [Effective January 1, 2022.]

28-77-507. Adjustment between income and principal because of taxes. [Effective January 1, 2022.]

28-77-501. Disbursement from income. [Effective January 1, 2022.]

Subject to § 28-77-504, and except as otherwise provided in § 28-77-601(c)(2) or § 28-77-601(c)(3), a fiduciary shall disburse from income:

(1) one-half of:

(A) the regular compensation of the fiduciary and any person providing investment advisory, custodial, or other services to the fiduciary, to the extent income is sufficient; and

(B) an expense for an accounting, judicial or nonjudicial proceeding, or other matter that involves both income and successive interests, to the extent income is sufficient;

(2) the balance of the disbursements described in paragraph (1), to the extent a fiduciary that is an independent person determines that making those disbursements from income would be in the interests of the beneficiaries;

(3) another ordinary expense incurred in connection with administration, management, or preservation of property and distribution of income, including interest, an ordinary repair, regularly recurring tax assessed against principal, and an expense of an accounting, judicial or

nonjudicial proceeding, or other matter that involves primarily an income interest, to the extent income is sufficient; and

(4) a premium on insurance covering loss of a principal asset or income from or use of the asset.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-502. Disbursement from principal. [Effective January 1, 2022.]

(a) Subject to § 28-77-505, and except as otherwise provided in § 28-77-601(c)(2), a fiduciary shall disburse from principal:

(1) the balance of the disbursements described in § 28-77-501(1) and § 28-77-501(3), after application of § 28-77-501(2);

(2) the fiduciary's compensation calculated on principal as a fee for acceptance, distribution, or termination;

(3) a payment of an expense to prepare for or execute a sale or other disposition of property;

(4) a payment on the principal of a trust debt;

(5) a payment of an expense of an accounting, judicial or nonjudicial proceeding, or other matter that involves primarily principal, including a proceeding to construe the terms of the trust or protect property;

(6) a payment of a premium for insurance, including title insurance, not described in § 28-77-501(4), of which the fiduciary is the owner and beneficiary;

(7) a payment of an estate or inheritance tax or other tax imposed because of the death of a decedent, including penalties, apportioned to the trust; and

(8) a payment:

(A) related to environmental matters, including:

(i) reclamation;

(ii) assessing environmental conditions;

(iii) remedying and removing environmental contamination;

(iv) monitoring remedial activities and the release of substances;

(v) preventing future releases of substances;

(vi) collecting amounts from persons liable or potentially liable for the costs of activities described in clauses (i) through (v);

(vii) penalties imposed under environmental laws or regulations;

(viii) other actions to comply with environmental laws or regulations;

(ix) statutory or common law claims by third parties; and

(x) defending claims based on environmental matters; and

(B) for a premium for insurance for matters described in subparagraph (A).

(b) If a principal asset is encumbered with an obligation that requires income from the asset to be paid directly to a creditor, the fiduciary shall transfer from principal to income an amount equal to the

income paid to the creditor in reduction of the principal balance of the obligation.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,
§ 3: Jan. 1, 2022.

28-77-503. Transfer from income to principal for depreciation.
[Effective January 1, 2022.]

(a) In this section, “depreciation” means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a tangible asset having a useful life of more than one year.

(b) A fiduciary may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) of the part of real property used or available for use by a beneficiary as a residence;

(2) of tangible personal property held or made available for the personal use or enjoyment of a beneficiary; or

(3) under this section, to the extent the fiduciary accounts:

(A) under § 28-77-410 for the asset; or

(B) under § 28-77-403 for the business or other activity in which the asset is used.

(c) An amount transferred to principal under this section need not be separately held.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,
§ 3: Jan. 1, 2022.

28-77-504. Reimbursement of income from principal. **[Effective January 1, 2022.]**

(a) If a fiduciary makes or expects to make an income disbursement described in subsection (b), the fiduciary may transfer an appropriate amount from principal to income in one or more accounting periods to reimburse income.

(b) To the extent the fiduciary has not been and does not expect to be reimbursed by a third party, income disbursements to which subsection (a) applies include:

(1) an amount chargeable to principal but paid from income because principal is illiquid;

(2) a disbursement made to prepare property for sale, including improvements and commissions; and

(3) a disbursement described in § 28-77-502(a).

(c) If an asset whose ownership gives rise to an income disbursement becomes subject to a successive interest after an income interest ends, the fiduciary may continue to make transfers under subsection (a).

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,
§ 3: Jan. 1, 2022.

28-77-505. Reimbursement of principal from income. [Effective January 1, 2022.]

(a) If a fiduciary makes or expects to make a principal disbursement described in subsection (b), the fiduciary may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or provide a reserve for future principal disbursements.

(b) To the extent a fiduciary has not been and does not expect to be reimbursed by a third party, principal disbursements to which subsection (a) applies include:

(1) an amount chargeable to income but paid from principal because income is not sufficient;

(2) the cost of an improvement to principal, whether a change to an existing asset or the construction of a new asset, including a special assessment;

(3) a disbursement made to prepare property for rental, including tenant allowances, leasehold improvements, and commissions;

(4) a periodic payment on an obligation secured by a principal asset, to the extent the amount transferred from income to principal for depreciation is less than the periodic payment; and

(5) a disbursement described in § 28-77-502(a).

(c) If an asset whose ownership gives rise to a principal disbursement becomes subject to a successive interest after an income interest ends, the fiduciary may continue to make transfers under subsection (a).

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,
§ 3: Jan. 1, 2022.

28-77-506. Income taxes. [Effective January 1, 2022.]

(a) A tax required to be paid by a fiduciary which is based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a fiduciary which is based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) Subject to subsection (d) and §§ 28-77-504, 28-77-505, and 28-77-507, a tax required to be paid by a fiduciary on a share of an entity's taxable income in an accounting period must be paid from:

(1) income and principal proportionately to the allocation between income and principal of receipts from the entity in the period; and

(2) principal to the extent the tax exceeds the receipts from the entity in the period.

(d) After applying subsections (a) through (c), a fiduciary shall adjust income or principal receipts, to the extent the taxes the fiduciary pays are reduced because of a deduction for a payment made to a beneficiary.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-507. Adjustment between income and principal because of taxes. [Effective January 1, 2022.]

(a) A fiduciary may make an adjustment between income and principal to offset the shifting of economic interests or tax benefits between current income beneficiaries and successor beneficiaries which arises from:

(1) an election or decision the fiduciary makes regarding a tax matter, other than a decision to claim an income tax deduction to which subsection (b) applies;

(2) an income tax or other tax imposed on the fiduciary or a beneficiary as a result of a transaction involving the fiduciary or a distribution by the fiduciary; or

(3) ownership by the fiduciary of an interest in an entity a part of whose taxable income, whether or not distributed, is includable in the taxable income of the fiduciary or a beneficiary.

(b) If the amount of an estate tax marital or charitable deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes and, as a result, estate taxes paid from principal are increased and income taxes paid by the fiduciary or a beneficiary are decreased, the fiduciary shall charge each beneficiary that benefits from the decrease in income tax to reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax, to the extent the principal used to pay the increase would have qualified for a marital or charitable deduction but for the payment. The share of the reimbursement for each fiduciary or beneficiary whose income taxes are reduced must be the same as its share of the total decrease in income tax.

(c) A fiduciary that charges a beneficiary under subsection (b) may offset the charge by obtaining payment from the beneficiary, withholding an amount from future distributions to the beneficiary, or adopting another method or combination of methods.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

**SUBCHAPTER 6 — DEATH OF INDIVIDUAL OR TERMINATION OF INCOME
INTEREST [EFFECTIVE JANUARY 1, 2022]**

SECTION.

28-77-601. Determination and distribution of net income. [Effective January 1, 2022.]

SECTION.

28-77-602. Distribution to successor beneficiary. [Effective January 1, 2022.]

28-77-601. Determination and distribution of net income. [Effective January 1, 2022.]

(a) This section applies when:

- (1) the death of an individual results in the creation of an estate or trust; or
- (2) an income interest in a trust terminates, whether the trust continues or is distributed.

(b) A fiduciary of an estate or trust with an income interest that terminates shall determine, under subsection (e) and § 28-77-401 et seq., § 28-77-501 et seq., and § 28-77-701 et seq., the amount of net income and net principal receipts received from property specifically given to a beneficiary. The fiduciary shall distribute the net income and net principal receipts to the beneficiary that is to receive the specific property.

(c) A fiduciary shall determine the income and net income of an estate or income interest in a trust which terminates, other than the amount of net income determined under subsection (b), under § 28-77-401 et seq., § 28-77-501 et seq., and § 28-77-701 et seq. and by:

- (1) including in net income all income from property used or sold to discharge liabilities;
- (2) paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries, court costs and other expenses of administration, and interest on estate and inheritance taxes and other taxes imposed because of the decedent's death, but the fiduciary may pay the expenses from income of property passing to a trust for which the fiduciary claims a federal estate tax marital or charitable deduction only to the extent:

(A) the payment of the expenses from income will not cause the reduction or loss of the deduction; or

(B) the fiduciary makes an adjustment under § 28-77-507(b); and

(3) paying from principal other disbursements made or incurred in connection with the settlement of the estate or the winding up of an income interest that terminates, including:

(A) to the extent authorized by the decedent's will, the terms of the trust, or applicable law, debts, funeral expenses, disposition of remains, family allowances, estate and inheritance taxes, and other taxes imposed because of the decedent's death; and

(B) related penalties that are apportioned, by the decedent's will, the terms of the trust, or applicable law, to the estate or income interest that terminates.

(d) A fiduciary shall distribute net income in the manner described in § 28-77-602 to all other beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(e) A fiduciary may not reduce principal or income receipts from property described in subsection (b) because of a payment described in § 28-77-501 or § 28-77-502, to the extent the decedent's will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property must be determined by including the amount the fiduciary receives or pays regarding the property, whether the amount accrued or became due before, on, or after the date of the decedent's death or an income interest's terminating event, and making a reasonable provision for an amount the estate or income interest may become obligated to pay after the property is distributed.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-602. Distribution to successor beneficiary. [Effective January 1, 2022.]

(a) Except to the extent § 28-77-301 et seq. applies for a beneficiary that is a trust, each beneficiary described in § 28-77-601(d) is entitled to receive a share of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to which this section applies, each beneficiary, including a beneficiary that does not receive part of the distribution, is entitled, as of each distribution date, to a share of the net income the fiduciary received after the decedent's death, an income interest's other terminating event, or the preceding distribution by the fiduciary.

(b) In determining a beneficiary's share of net income under subsection (a), the following rules apply:

(1) The beneficiary is entitled to receive a share of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date.

(2) The beneficiary's fractional interest under paragraph (1) must be calculated:

(A) on the aggregate value of the assets as of the distribution date without reducing the value by any unpaid principal obligation; and

(B) without regard to:

(i) property specifically given to a beneficiary under the decedent's will or the terms of the trust; and

(ii) property required to pay pecuniary amounts not in trust.

(3) The distribution date under paragraph (1) may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which the assets are distributed.

(c) To the extent a fiduciary does not distribute under this section all the collected but undistributed net income to each beneficiary as of a distribution date, the fiduciary shall maintain records showing the interest of each beneficiary in the net income.

(d) If this section applies to income from an asset, a fiduciary may apply the rules in this section to net gain or loss realized from the disposition of the asset after the decedent's death, an income interest's terminating event, or the preceding distribution by the fiduciary.

History. Acts 2021, No. 1088, § 2.
Effective Dates. Acts 2021, No. 1088,
 § 3: Jan. 1, 2022.

SUBCHAPTER 7 — APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST [EFFECTIVE JANUARY 1, 2022]

SECTION.	SECTION.
28-77-701. When right to income begins and ends. [Effective January 1, 2022.]	est begins. [Effective January 1, 2022.]
28-77-702. Apportionment of receipts and disbursements when decedent dies or income inter-	28-77-703. Apportionment when income interest ends. [Effective January 1, 2022.]

28-77-701. When right to income begins and ends. [Effective January 1, 2022.]

(a) An income beneficiary is entitled to net income in accordance with the terms of the trust from the date an income interest begins. The income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to:

- (1) the trust for the current income beneficiary; or
- (2) a successive interest for a successor beneficiary.
- (b) An asset becomes subject to a trust under subsection (a)(1):
 - (1) for an asset that is transferred to the trust during the settlor's life, on the date the asset is transferred;
 - (2) for an asset that becomes subject to the trust because of a decedent's death, on the date of the decedent's death, even if there is an intervening period of administration of the decedent's estate; or
 - (3) for an asset that is transferred to a fiduciary by a third party because of a decedent's death, on the date of the decedent's death.

(c) An asset becomes subject to a successive interest under subsection (a)(2) on the day after the preceding income interest ends, as determined under subsection (d), even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs or on the last day of a period

during which there is no beneficiary to which a fiduciary may or must distribute income.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-702. Apportionment of receipts and disbursements when decedent dies or income interest begins. [Effective January 1, 2022.]

(a) A fiduciary shall allocate an income receipt or disbursement, other than a receipt to which § 28-77-601(b) applies, to principal if its due date occurs before the date on which:

(1) for an estate, the decedent died; or

(2) for a trust or successive interest, an income interest begins.

(b) If the due date of a periodic income receipt or disbursement occurs on or after the date on which a decedent died or an income interest begins, a fiduciary shall allocate the receipt or disbursement to income.

(c) If an income receipt or disbursement is not periodic or has no due date, a fiduciary shall treat the receipt or disbursement under this section as accruing from day to day. The fiduciary shall allocate to principal the portion of the receipt or disbursement accruing before the date on which a decedent died or an income interest begins, and to income the balance.

(d) A receipt or disbursement is periodic under subsections (b) and (c) if:

(1) the receipt or disbursement must be paid at regular intervals under an obligation to make payments; or

(2) the payor customarily makes payments at regular intervals.

(e) An item of income or obligation is due under this section on the date the payor is required to make a payment. If a payment date is not stated, there is no due date.

(f) Distributions to shareholders or other owners from an entity to which § 28-77-401 applies are due:

(1) on the date fixed by or on behalf of the entity for determining the persons entitled to receive the distribution;

(2) if no date is fixed, on the date of the decision by or on behalf of the entity to make the distribution; or

(3) if no date is fixed and the fiduciary does not know the date of the decision by or on behalf of the entity to make the distribution, on the date the fiduciary learns of the decision.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-703. Apportionment when income interest ends. [Effective January 1, 2022.]

- (a) In this section, “undistributed income” means net income received on or before the date on which an income interest ends. The term does not include an item of income or expense which is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.
- (b) Except as otherwise provided in subsection (c), when a mandatory income interest of a beneficiary ends, the fiduciary shall pay the beneficiary’s share of the undistributed income that is not disposed of under the terms of the trust to the beneficiary or, if the beneficiary does not survive the date the interest ends, to the beneficiary’s estate.
- (c) If a beneficiary has an unqualified power to withdraw more than five percent of the value of a trust immediately before an income interest ends:
 - (1) the fiduciary shall allocate to principal the undistributed income from the portion of the trust which may be withdrawn; and
 - (2) subsection (b) applies only to the balance of the undistributed income.
- (d) When a fiduciary’s obligation to pay a fixed annuity or a fixed fraction of the value of assets ends, the fiduciary shall prorate the final payment as required to preserve an income tax, gift tax, estate tax, or other tax benefit.

History. Acts 2021, No. 1088, § 2.
Effective Dates. Acts 2021, No. 1088,
 § 3: Jan. 1, 2022.

SUBCHAPTER 8 — MISCELLANEOUS PROVISIONS [EFFECTIVE JANUARY 1, 2022]

SECTION.	SECTION.
28-77-801. Uniformity of application and construction. [Effective January 1, 2022.]	tional Commerce Act. [Effective January 1, 2022.]
28-77-802. Relation to Electronic Signatures in Global and Na-	28-77-803. Application to trust or estate. [Effective January 1, 2022.]

28-77-801. Uniformity of application and construction. [Effective January 1, 2022.]

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History. Acts 2021, No. 1088, § 2.
Effective Dates. Acts 2021, No. 1088,
 § 3: Jan. 1, 2022.

28-77-802. Relation to Electronic Signatures in Global and National Commerce Act. [Effective January 1, 2022.]

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

28-77-803. Application to trust or estate. [Effective January 1, 2022.]

This chapter applies to a trust or estate existing or created on or after January 1, 2022, except as otherwise expressly provided in the terms of the trust or this chapter.

History. Acts 2021, No. 1088, § 2.

Effective Dates. Acts 2021, No. 1088,

§ 3: Jan. 1, 2022.

TITLE 28 — APPENDIX
ADMINISTRATIVE ORDER NUMBER 12 — OFFICIAL
PROBATE FORMS

The Per Curiam Order of the Supreme Court of Arkansas of October 18, 2018, revised Probate Forms 1–4, 6–9, 12, 13, 15–20, 23, 24, 26–28, and 30–33, to provide for contact information, effective January 1, 2019.

FORM 1.

[Caption]

DEMAND FOR NOTICE OF PROCEEDINGS FOR PROBATE OF
WILL OR APPOINTMENT OF PERSONAL REPRESENTATIVE

The undersigned, _____, respectfully de-
mands notice of any proceeding to probate a will of
_____, deceased, who resided at
_____, Arkansas, or for the appointment of
a personal representative to administer [his] [her] estate.

My address is _____.

My interest in the estate is that of _____.

My attorney, authorized to represent me in this proceeding, and to
accept notice for me, is _____, whose ad-
dress is _____.

Date: _____, ____.

[Signature]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

Reporter's Notes to Form 1: See Ark. Code Ann. § 28-40-108(a). The form was revised to provide for contact information.

Addition to Reporter's Notes (2019):

FORM 2.

[Caption]

PETITION FOR APPOINTMENT OF [ADMINISTRATOR] [ADMINISTRATRIX]

_____, whose address is _____, and whose interest in the decedent's estate is that of _____, petitions that letters of administration of the estate be issued. The facts known to petitioner are:

1. The decedent, _____, aged _____, who resided at _____ in _____ County, Arkansas, died intestate at _____ on or about [date].

2. The surviving spouse and heirs of the decedent, and their respective ages, relationships to the decedent, and residence addresses, are:

Name	Age	Relationship	Residence Address
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. The probable value of the decedent's estate is:

Real property \$ _____

Personal property \$ _____

4. Petitioner nominates _____, whose residence address is _____, for appointment as [administrator] [administratrix] of the estate. The relationship, if any, of the nominee to the decedent, and other facts, if any, which entitle the nominee to appointment are: _____.

THEREFORE, petitioner requests that this court make an order determining the fact of the death and of the intestacy of the decedent,

and appointing petitioner’s nominee [administrator] [administratrix] of the estate.

Date: _____, ____.

[Signature] [Petitioner]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

[Affidavit]

Reporter’s Notes to Form 2: See Ark. Code Ann. § 28-40-107. The term “heir” is defined by statute as “a person entitled by the law of descent and distribution to the real and personal property of an intestate decedent, but does not include a surviving

spouse.” Ark. Code Ann. § 28-1-102(a)(10).
Addition to Reporter’s Notes (2019): The form was revised to provide for contact information.

FORM 3.

[Caption]

PETITION FOR PROBATE OF WILL AND APPOINTMENT OF PERSONAL REPRESENTATIVE

_____, whose address is _____, and whose interest in the decedent’s estate is that of _____, petitions that a certain written instrument be admitted to probate as the last will of the decedent, and for the appointment of a personal representative. The facts known to petitioner are:

1. The decedent, _____, aged _____, who resided at _____ in _____ County, Arkansas, died at _____ on or about [date].

2. The decedent left as his last will a written instrument dated the ____ day of _____, _____, which has been filed in this court. Proof of its execution in the manner required by law has been made or will be made at the time of presentation of this petition.

3. The surviving spouse, heirs, and devisees of the decedent, and their respective ages, relationships to the decedent, and residence addresses, are:

Name	Age	Relationship	Residence Address
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. The probable value of the decedent's estate is:

Real property \$ _____

Personal property \$ _____

5. The will of the decedent nominates _____ as [executor] [executrix]. (Petitioner nominates _____ for appointment as _____, _____ of _____ to administer the estate.) The relationship, if any, of the nominee to the decedent, and other facts, if any, which entitle the nominee to appointment are: _____.

THEREFORE, petitioner requests that this court make an order determining (1) the fact of the death of the decedent; (2) that the proffered instrument was executed in all respects according to law when the testator was competent to do so and acting without undue influence, fraud or restraint, has not been revoked and is decedent's last will; and (3) appointing the nominee to administer the decedent's estate.

Date: _____, ____.

[Signature] [Petitioner]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

[Affidavit]

Reporter’s Notes to Form 3: See Ark. Code Ann. § 28-40-107. The sentence in parentheses in paragraph 5 is to be substituted for the preceding sentence if the petitioner seeks appointment of a per-

sonal representative who is not nominated in the decedent’s will.

Addition to Reporter’s Notes (2019): The form was revised to provide for contact information.

FORM 4.

[Caption]

PROOF OF WILL

I, _____, state on oath:

I am one of the subscribing witnesses to the attached written instrument, dated the ____ day of _____, ____, which purports to be (a codicil to) the last will of _____, deceased. On the execution date of the instrument the [testator] [testatrix], in my presence, and in the presence of the other attesting witnesses, signed the instrument at the end, or acknowledged [his] [her] signature, declared the instrument to be [his] [her] will, and requested that I attest [his] [her] execution of it. Then, in the presence of the [testator] [testatrix] and the other witnesses, I signed my name as an attesting witness. At the time of execution of the instrument, the [testator] [testatrix] appeared to be eighteen years of age or older, of sound mind, and acting without undue influence, fraud or restraint.

Date: _____, ____.

[Signature]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

[Affidavit]

Reporter's Notes to Form 4: This form is designed for execution and filing with the court when the original will did not include a "proof of will." Because it is not always practical to have multiple witnesses appear simultaneously, the form is for a single witness. This form is for an attested will and should not be used for a holographic will. An attested will must be proved by at least two attesting witnesses

or as otherwise provided by statute. Ark. Code Ann. § 28-40-117(a). If the instrument is a codicil, the language in parentheses should be included. An affidavit is required by Ark. Code Ann. § 28-40-118(a).

Addition to Reporter's Notes (2019):
The form was revised to provide for contact information.

FORM 6.

[Caption]

BOND OF PERSONAL REPRESENTATIVE

The undersigned, _____, as principal, having been appointed [executor] [executrix] of the will of (or [administrator] [administratrix] of the estate of) _____, deceased, and _____, as surety _____, acknowledge themselves to be jointly and severally obligated to the State of Arkansas, for the use and benefit of all persons interested in the estate, in the penal sum of _____ Dollars (\$ _____) conditioned as follows:

If the undersigned [executor] [executrix] (or [administrator] [administratrix]) shall well and faithfully account for his administration of the estate, as required by law, this bond shall become void. Otherwise, this bond will remain in full force and effect.

Date: _____, ____.

[Signature], as Principal.

[Print Name]

[Address]

[Telephone Number]

[Email Address]

[Signature], as Surety.

[Print Name]

[Address]

[Telephone Number]

[Email Address]

Approved this date: _____, ____.

_____, Clerk.

By: _____, Deputy Clerk.

Approved this date: _____, ____.

_____, Judge.

Reporter's Notes to Form 6: See Ark. Code Ann. § 28-48-204. The references to administrator and administratrix in parentheses are to be substituted for the references to executor and executrix if the personal representative was not nominated in the decedent's will. If a corporate

surety is used, the power of attorney of agent should be attached. If the sureties are individuals, their qualifying affidavit (Form 7) should be attached.

Addition to Reporter's Notes (2019): The form was revised to provide for contact information.

FORM 7.

[Caption]

QUALIFYING AFFIDAVIT OF PERSONAL SURETIES

The undersigned, being the sureties on the bond filed in this estate, state on oath that we collectively own property in the State of Arkansas, in excess of our liabilities and subject to execution, of a value equal to the amount of the bond.

Date: _____, ____.

[Signature], as Surety

[Print Name]

[Address]

[Telephone Number]

[Email Address]

[Affidavit]

Reporter’s Notes to Form 7: *See* Ark. Code Ann. § 28-48-205. This form is only for individual sureties. It may be used with the guardian’s bond (Form 27). An affidavit is required by Ark. Code Ann. § 28-48-205(b).

Addition to Reporter’s Notes (2019):
The form was revised to provide for contact information.

FORM 8.

[Caption]

ACCEPTANCE OF APPOINTMENT AS PERSONAL REPRESENTATIVE

The undersigned, _____, having been appointed _____ of the estate of _____, deceased, accepts the appointment.

Date: _____, ____.

[Signature]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

Reporter’s Notes to Form 8: *See* Ark. Code Ann. § 28-48-102(a). This form is to be used only when no bond is required of the personal representative.

Addition to Reporter’s Notes (2019):
The form was revised to provide for contact information.

FORM 9.

[Caption]

DESIGNATION OF PROCESS AGENT

The undersigned, _____, as
_____ of the estate of _____,
appoints the clerk of this court and his successors in office, (or
_____, whose residence address is
_____,) as agent in behalf of the under-
signed, to accept service of process and notice in all actions and
proceedings with respect to the estate.

Date: _____, ____.

[Signature]_____
[Print Name]_____
[Address]_____
[Telephone Number]_____
[Email Address]

Reporter's Notes to Form 9: See Ark. Code Ann. § 28-48-101(b)(6). This form is for use by a nonresident personal representative or guardian. The language in parentheses should be substituted for the language immediately preceding it if

someone other than the clerk of the court is appointed. The statute does not require an affidavit or acknowledgment.

Addition to Reporter's Notes (2019): The form was revised to provide for contact information.

FORM 12.

[Caption]

NOTICE OF APPOINTMENT AS [ADMINISTRATOR] [ADMINISTRATRIX]

Last known address: _____

Date of Death: _____, _____

The undersigned was appointed [administrator] [administratrix] of the estate of _____, deceased, on [date].

All persons having claims against the estate must exhibit them, duly verified, to the undersigned within three (3) months from the date of the first publication of this notice, or they shall be forever barred and precluded from any benefit in the estate. However, claims for injury or death caused by the negligence of the decedent shall be filed within six (6) months from the date of the first publication of this notice, or they shall be forever barred and precluded from any benefit in the estate.

This notice first published on [date].

Date: _____, _____.

[Signature] [Administrator]
[Administratrix]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

Reporter's Notes to Form 12: See Ark. Code Ann. § 28-40-111. This form shall used if no will was admitted to probate.

Addition to Reporter's Notes (2019): The form was revised to provide for contact information.

FORM 13.

[Caption]

NOTICE OF APPOINTMENT AS [EXECUTOR] [EXECUTRIX] (OR [ADMINISTRATOR] [ADMINISTRATRIX] WITH WILL ANNEXED)

Last known address: _____

Date of Death: _____, ____

An instrument dated _____, ____ was admitted to probate on [date] as the last will of _____, deceased, and the undersigned has been appointed [executor] [executrix] (or [administrator] [administratrix]) thereunder. Contest of the probate of the will can be effected only by filing a petition within the time provided by law.

All persons having claims against the estate must exhibit them, duly verified, to the undersigned within three (3) months from the date of the first publication of this notice, or they shall be forever barred and precluded from any benefit in the estate. However, claims for injury or death caused by the negligence of the decedent shall be filed within six (6) months from the date of the first publication of this notice, or they shall be forever barred and precluded from any benefit in the estate.

This notice first published on [date].

Date: _____, ____.

[Signature] [Executor] [Executrix]
[Administrator] [Administratrix]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

Reporter’s Notes to Form 13: See Ark. Code Ann. § 28-40-111. This form shall be used if a will was admitted to probate and a personal representative was appointed. The language in parentheses in the first paragraph should be substituted for the language immediately preceding it if the personal representative was not nominated in the decedent’s will.

The form to be used when a will is probated but no personal representative appointed may be found in Ark. Code Ann. § 28-40-111(c)(3). Because such proceedings are infrequent, no official form was adopted.

Addition to Reporter’s Notes (2019):
The form was revised to provide for contact information.

FORM 15.

[Caption]

REQUEST FOR SPECIAL NOTICE OF HEARING

The undersigned, _____, respectfully requests written notice by ordinary mail of the time and place of all hearings on the settlement of accounts, on final distribution, and on any other matters for which any notice is required by law, by rule of court, or by an order in this case.

My address is _____.

My interest in the estate is that of _____.

My attorney, authorized to represent me in this proceeding, and to accept notice for me, is _____, whose address is _____.

Date: _____, ____.

[Signature]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

PROOF OF SERVICE

1. (To be used if acknowledged by personal representative or his attorney)

The undersigned acknowledges receipt of this notice on [date].

[Personal Representative]

By: _____

[Attorney]

(To be used when not so acknowledged)

The undersigned duly served this notice on _____, the personal representative of this estate, on [date] in the following manner: [Insert the method of service as specified in Ark. Code Ann. § 28-1-112.]

[Affidavit]

Reporter's Notes to Form 15: See Ark. Code Ann. § 28-40-108(b). This form is to be used only after a personal representative has been appointed and must be prepared in duplicate, with one copy served on the personal representative. An affidavit is required only if Paragraph 2 is used and must be sworn to unless signed by an officer authorized by law to serve civil process, or signed by the clerk or by an attorney of this state. See Ark. Code Ann. § 28-1-112(f).

Addition to Reporter's Notes (2019): The form was revised to provide for contact information.

Form 16.

[Caption]

PETITION FOR AWARD OF STATUTORY ALLOWANCES

The decedent, _____, is survived by the persons named below who constitute the surviving spouse, if any, and all of the decedent's minor children, if any.

Name of surviving spouse: _____.

Children:

Name of Child	Sex	Age	Name of Guardian
_____	_____	_____	_____
_____	_____	_____	_____

The surviving spouse, who was living with the decedent at the time of the decedent's death, is entitled to the award of the following items of household furniture, furnishings, appliances, implements and equipment which are reasonably necessary for the use and occupancy of the family dwelling by the surviving spouse and minor children, if any:

HOUSEHOLD FURNITURE AND EQUIPMENT

[Itemizing is required only to the extent necessary to distinguish the selected items from other household furniture and equipment, if any, of the decedent's estate.]

Among the items of personal property of the estate of the decedent are those described below, which the undersigned surviving spouse of the decedent (or the undersigned guardian of the decedent's minor children) has selected to be assigned to and vested in the surviving spouse and minor children of the decedent as provided by law. Each item of property has the value stated opposite its description.

ITEMIZED DESCRIPTION OF PROPERTY

Description	Value
_____	\$ _____
_____	\$ _____
_____	\$ _____

The surviving spouse and minor children of the decedent are entitled to be awarded sustenance for a period of two months after the death of the decedent as follows:

THEREFORE, petitioner requests that this court enter an order assigning to and vesting in the surviving spouse and minor children of the decedent the personal property described above, to which they are respectively entitled under the provisions of Ark. Code Ann. §§ 28-39-101 through 28-39-104.

Date: _____, ____.

[Capacity of Petitioner]

[Signature]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

[Affidavit]

Reporter's Notes to Form 16: See Ark. Code Ann. §§ 28-39-101 — 28-39-104. The total value under "Itemized Description of Property" is limited to \$1,000 as against creditors and \$2,000 as against distributees. If minor children are not the children of the surviving spouse, the petition should be revised to reflect that the allowance vests in the surviving spouse to the extent of one-half thereof, and the remainder vests in the decedent's minor children in equal shares. Award for suste-

nance for period of two months after death of decedent shall be a reasonable amount, not exceeding \$500 in the aggregate. Ark. Code Ann. § 28-39-101(c). Beneath the signature line, the capacity of the petitioner should be identified (e.g., as the personal representative, the surviving spouse, or the guardian of minor children). If the petitioner is the guardian of minor children, the language in parentheses should be substituted for the language immediately preceding it.

Addition to Reporter's Notes (2019):
The form was revised to provide for contact information.

FORM 17.

[Caption]

INVENTORY OF DECEDENT'S ESTATE

The undersigned, _____ of the estate of _____, deceased, states on oath that to the best of my knowledge and belief, the following is a complete and accurate inventory of all property owned by the decedent, and its fair market value, at the time of the decedent's death.

REAL ESTATE

Legal Description	Encumbrances, Liens, etc., and Net Value	Respective Amounts Thereof
Homestead: _____	_____	\$ _____
Other real estate: _____	_____	\$ _____

Total Value of Real Estate: \$ _____

PERSONAL PROPERTY

Household Goods and Personal Effects

[This list should include, but not be limited to, furniture, household and yard equipment, clothing, jewelry, etc.]

Description	Encumbrances, Liens, etc., and Net Value	Respective Amounts Thereof
_____	_____	\$ _____
_____	_____	\$ _____

Other Tangible Personal Property

[This list should include, but not be limited to, automobiles and other motor vehicles, farm equipment, livestock, agricultural products, stocks of merchandise, any going business enterprise or interest therein, etc.]

Description	Encumbrances, Liens, etc., and Net Value	Respective Amounts Thereof
_____	_____	\$ _____
_____	_____	\$ _____

Intangible Personal Property

[List separately in detail: cash on hand; money on deposit, stating names and addresses of depositories; bonds, stating names of issuers, interest rates, classes, maturity dates, serial numbers, face amounts, and dates to which interest is paid; corporate stocks, stating certificate numbers, names of issuers, classes, and number of shares; notes receivable, stating the names and addresses of makers, dates, amounts, interest rates, and dates to which interest paid, balances due, maturities, and security, if any; accounts receivable, stating names of debtors, dates of last items and balances due; and other intangibles, describing in detail.]

Description	Encumbrances, Liens, etc., and Net Value	Respective Amounts Thereof
_____	_____	\$ _____
_____	_____	\$ _____

Total Value of Personal Property: \$ _____

SUMMARY

Total real property: \$ _____

Total personal property: \$ _____

Total estate: \$ _____

The undersigned was not indebted or obligated to the decedent at the time of the decedent's death except as stated herein.

Date: _____, ____.

[Signature]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

[Affidavit]

Reporter’s Notes to Form 17: See Ark. Code Ann. § 28-49-110. This form should be filed by the personal representative within two months after qualification, unless the requirement is waived pursuant to Ark. Code Ann. § 28-49-110(c)(1). Inventory should not include any property owned jointly with right of survivorship by the decedent and a third

party, or any insurance proceeds or other benefits payable by beneficiary designation, unless such benefits are payable to the decedent’s estate. An affidavit is required by Ark. Code Ann. § 28-49-110(a)(2).

Addition to Reporter’s Notes (2019): The form was revised to provide for contact information.

FORM 18.

[Caption]

AFFIDAVIT TO CLAIM AGAINST ESTATE

I, _____, do swear that the attached claim against the estate of _____, deceased, is correct, that nothing has been paid or delivered toward the satisfaction of the claim except as noted, that there are no offsets to this claim, to the knowledge of this affiant, except as therein stated, and that the sum of _____ Dollars (\$ _____) is now justly due (or will or may become due as stated). I further state that if this claim is based upon a written instrument, a true and complete copy, including all endorsements, is attached.

Date: _____, ____.

[Signature]

 [Print Name]

 [Address]

 [Telephone Number]

 [Email Address]

[Affidavit]

Reporter's Notes to Form 18: See Ark. Code Ann. §§ 28-50-103 — 28-50-104. If this affidavit is made by a corporation, organization, or anyone other than an individual in his or her own behalf, the representative capacity of the affiant must be clearly stated in the first line in

the form and below the signature line. An affidavit is required by Ark. Code Ann. § 28-50-103(a).

Addition to Reporter's Notes (2019): The form was revised to provide for contact information.

FORM 19.

[Caption]

APPRAISAL

The undersigned, _____, _____ and _____, having been appointed to appraise the property described below, represented to us by _____ as _____ to be property of the captioned estate, do appraise the value of each item as:

REAL ESTATE

Legal Description of Property and Interest Therein Owned by the Estate	Value
---	-------

_____	\$ _____
_____	\$ _____

Total Value: \$ _____

Each of the undersigned states on oath that [he] [she] is not interested in the estate, the property appraised, or the sale of any of this property; that [he] [she] believes [himself] [herself] to be well informed concerning the value of the property appraised; and that the foregoing appraisal is on the basis of the full and fair value of the property.

Date: _____, ____.

[Signature] [Appraiser]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

[Affidavit]

Reporter's Notes to Form 19: *See* Ark. Code Ann. § 28-51-302. This form is to be used by personal representatives and guardians of estates when real estate of the decedent or ward is to be sold, and in sales of personal property when an appraisal is required by the court. The court may approve the appointment of one appraiser instead of the three contem-

plated by the form to appraise real property, unless an heir or beneficiary of the estate objects. By statute, the appraisers must certify the appraisal under oath. Ark. Code Ann. § 28-51-302(b).

Addition to Reporter's Notes (2019): The form was revised to provide for contact information.

FORM 20.

[Caption]

ACCOUNTING BY PERSONAL REPRESENTATIVE

_____ respectfully submits to the court
[his] [her] account as _____ of this estate for the period

beginning on [date] and ending on [date]. This account is submitted because [insert the occasion for filing of account as set forth in Ark. Code Ann. § 28-52-103(a)].

1. Charges to accountant: [If this is the first account, the first item should be the value of the estate as reflected by the inventory. If a subsequent account, the first item should be the balance shown by the previous account. Thereafter list separately, described in detail: (a) additional property received by accountant; (b) all income; and (c) gains from the sale, conveyance or other disposition of any property received by the accountant during the accounting period. Show the date of each transaction.]

Total Charges to Accountant: \$ _____

2. Credits, other than payments to distributees, to which accountant is entitled: [List separately (a) all disbursements, other than payments to distributees, and (b) all losses sustained on sales, conveyances or other dispositions of any property, describing each item in full. Show the date of each transaction.]

Total: \$ _____

3. Credits for money paid or assets delivered to distributees: [Itemize each disbursement of cash and describe in detail other assets delivered, showing opposite each asset the amount at which its value was estimated in the inventory or, if purchased by the accountant, its cost. Show the date of each transaction.]

Total: \$ _____

SUMMARY OF ACCOUNT

Charges to accountant: \$ _____

Credits as per paragraph 2: \$ _____

Credits as per paragraph 3: \$ _____

Total Credits: \$ _____

Balance remaining in hands of accountant: \$ _____

4. Description of balance remaining in hands of accountant: [List separately and describe in detail each item of property remaining in the accountant's hands, showing the inventory value or cost of each.]

5. Changes in form of assets not affecting balance: [List separately and describe in detail all changes in the form of assets resulting from

collections or sales at inventory or cost value and other such transactions. Show the date of each transaction.]

6. All outstanding liabilities of the estate of which accountant has knowledge are:

Total Liabilities: \$ _____

Vouchers evidencing cash disbursements and receipts evidencing other assets delivered for which accountant has taken credit are attached to this account.

THEREFORE, having fully accounted for the administration of this estate for the period set out above, accountant requests that, after proper advertisement and notice, if any, required by law or by the court, this account be examined, approved, and confirmed by the court, and that accountant be allowed the sum of \$ _____ as [his] [her] fee for services rendered during the period covered by this account.

Date: _____, ____.

[Signature]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

[Affidavit]

Reporter's Notes to Form 20: See Ark. Code Ann. §§ 28-52-103 — 28-52-104. In the case of a final account, a request for an order of final distribution should be added, pursuant to Ark. Code Ann. § 28-52-105(b). This form should be filed by the personal representative unless the requirement is waived pursuant to

Ark. Code Ann. § 28-52-104(c). Verification of the account is required by Ark. Code Ann. § 28-52-103(a). Form 31 is to be used for an accounting by a guardian.

Addition to Reporter's Notes (2019):
The form was revised to provide for contact information.

FORM 23.

[Caption]

AFFIDAVIT FOR COLLECTION OF SMALL ESTATE BY DISTRIBUTEE

_____,
and _____, for the purpose of dispensing
with administration of this estate, deceased, state on oath:

1. The decedent _____, aged _____, who
resided at _____ in _____
County, Arkansas, died at _____ on or about [date]. No
petition for the appointment of a personal representative for the
decedent's estate is pending or has been granted.

2. More than forty-five (45) days have elapsed since decedent's death.

3. The value, less encumbrances, of all property owned by the decedent
at the time of death, excluding the homestead of and statutory allow-
ances for the benefit of the surviving spouse or minor children, if any, of
the decedent, does not exceed one hundred thousand dollars (\$100,000).

4. There are no unpaid claims or demands against the decedent or the
decedent's estate, and the Department of Human Services furnished no
federal or state benefits to the decedent (or, that if such benefits have
been furnished, the Department of Human Services has been reim-
bursed in accordance with state and federal laws and regulations).

5. An itemized description and valuation of the decedent's personal
property; a legal description and valuation of the decedent's real
property, including homestead, if any; and the names and addresses of
persons having possession thereof or residing on any of the decedent's
real property, are:

Description of Property, and Ex- tent and Details of Encum- brances, if Any	Valuation Less Encumbrances	In Possession of
_____	_____	_____
_____	_____	_____

6. The names, ages, relationships to the decedent and residence addresses of the persons entitled to receive the property of the decedent as surviving spouse, heirs or devisees of decedent’s will are:

Name	Age	Relationship	Residence Address
_____	_____	_____	_____
_____	_____	_____	_____

THEREFORE, the distributee[s] of this estate shall be entitled to distribution of the property identified above, without the necessity of an order of the court or other proceeding, upon furnishing a copy of this Affidavit, certified by the clerk, to any person owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property or right of the decedent.

Date: _____, ____.

[Signature] [Affiant]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

[Affidavit]

CERTIFICATE OF CLERK

The undersigned Clerk of the Probate Court of _____ County, Arkansas, certifies that this is a true copy of an affidavit filed in this court on [date], that the affidavit remains on file and that no petition for the appointment of a personal representative of this estate has been filed in this court.

Date: _____, ____.

_____, Clerk.

By: _____, Deputy Clerk.

(Seal)

Reporter's Notes to Form 23: See Ark. Code Ann. § 28-41-101. The language in parentheses in Paragraph 4 should be substituted for the language immediately preceding it if the Department of Human Services furnished benefits to the decedent. An affidavit by the distributee is required by Ark. Code Ann. § 28-41-101(a)(4). If an estate collected

pursuant to this affidavit contains real property, the distributee, to allow for presentation of claims against the estate, may publish a notice promptly after the affidavit has been filed. Ark. Code Ann. § 28-41-101(b)(2).

Addition to Reporter's Notes (2019): The form was revised to provide for contact information.

FORM 24.

[Caption]

PETITION FOR APPOINTMENT OF GUARDIAN OF THE PERSON AND ESTATE

The petitioner respectfully represents to this court that a guardian of the person and of the estate should be appointed for the incapacitated person whose name, date of birth, sex, and address are:

Name	Date of Birth	Sex	Residence Address
_____	_____	_____	_____

The nature of the incapacity and purpose of the guardianship sought for the incapacitated person are: [Insert the nature of incapacity and purpose of guardianship, in accordance with the definitions and classifications set forth in Ark. Code Ann. §§ 28-65-101 & 28-65-104.]

The nature, extent and value of the property of the incapacitated person and the interest of the incapacitated person in that property, are: [Include approximate value and description of property, including any compensation, pension, insurance or allowance to which the incapacitated person may be entitled].

There is no guardian of the person or estate of the incapacitated person, except as follows: [State whether a guardian has been appointed in any state for the estate or person of the incapacitated person and if not, write "none."]

_____, whose address is _____, is related to or interested in the incapacitated person by reason of _____ and is legally qualified to serve as guardian of the person and estate of the incapacitated person.

[He] [She] is at present serving as guardian of the persons or estates of the incapacitated persons whose names and addresses are as follows: [List the names and addresses of any wards for whom the person whose appointment is sought is already guardian.]

Insofar as the petitioner has been able to ascertain, the persons most closely related, by blood or marriage, to the incapacitated person are:

Name	Relation-ship	Residence Address
_____	_____	_____
_____	_____	_____

The nature of the proposed ward’s alleged disability is: [Set forth a statement of the alleged disability as defined by Ark. Code Ann. §§ 28-65-101(1) & 28-65-104.]

Petitioner recommends the following type of guardianship, having the scope and duration indicated: [Include a recommendation proposing the type, scope and duration of guardianship.]

The following facility or agency from which the proposed ward is receiving services has been notified of the proceedings: [Include a statement that any facility or agency from which the respondent is receiving services has been notified of the proceedings.]

The names and addresses of others having knowledge of the proposed ward’s disability are:

Name	Residence Address
_____	_____
_____	_____

Date: _____, ____.

[Signature] [Petitioner]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

[Affidavit]

Reporter's Notes to Form 24: This petition is for a guardianship of both the person and the estate. It should be modified if the guardianship is only of one or the other. By statute, incapacitated persons include those who are impaired by certain specified mental and physical disabilities, as well as persons under the age of 18 whose disabilities have not been removed and persons who are detained or confined by a foreign power or who have

disappeared. Ark. Code Ann. §§ 28-65-101 & 28-65-104. Matters that must be enumerated in the petition are set forth in Ark. Code Ann. § 28-65-205. *See also* Ark. Code Ann. §§ 28-65-105 — 28-65-106 (purpose of guardianship proceedings and rights of incapacitated persons).

Addition to Reporter's Notes (2019): The form was revised to provide for contact information.

FORM 26.

[Caption]

APPLICATION FOR WRITTEN NOTICE

To: _____

The undersigned, _____, in accordance with Ark. Code Ann. § 28-65-209, requests written notice of all hearings on petitions for settlement of accounts, for the sale, mortgage, lease, or exchange of any property of this guardianship estate, for an allowance of any nature payable from the ward's estate, for the investment of funds of the estate, for the removal, suspension, or discharge of the guardian, or for final termination of the guardianship, and any other matter affecting the welfare or care of the incapacitated person or [his] [her] property.

The requested notice should be sent to the undersigned at the following address:

Date: _____, ____.

[Signature] [Applicant or Attorney]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

Reporter’s Notes to Form 26: Pursuant to Ark. Code Ann. § 28-65-209, an interested party may, in person or by attorney, serve upon the guardian and upon his attorney, and file with the clerk of the court where the proceedings are pending, with a written admission or proof of service, a written request stating that he desires notice of some or all of the

matters enumerated in this form. Unless the court directs otherwise, upon filing the request, the person shall be entitled to notice of all such hearings or of such of them as he designates in his request.

Addition to Reporter’s Notes (2019):
The form was revised to provide for contact information.

FORM 27.

[Caption]

GUARDIAN’S BOND

The undersigned, _____, as principal, having been appointed guardian of the [person] [estate] [person and estate] of _____, an incapacitated person; and _____, as surety _____, acknowledge themselves to be jointly and severally obligated to the State of Arkansas, for the use and benefit of all persons interested, in the penal sum of _____ Dollars (\$_____), conditioned as follows:

If the undersigned guardian shall well and faithfully account for his guardianship, as by law required, this bond shall become void; otherwise, it will remain in full force and effect.

Date: _____, ____.

[Signature], as Principal

[Print Name]

[Address]

[Telephone Number]

[Email Address]

[Signature], as Surety

[Print Name]

[Address]

[Telephone Number]

[Email Address]

Approved this date: _____, ____.

_____, Clerk.

By: _____, Deputy Clerk.

Approved this date: _____, ____.

_____, Judge.

Reporter's Notes to Form 27: See Ark. Code Ann. § 28-65-215 (requirement for a bond). For the qualifying affidavit of personal sureties, see Form 7.	Addition to Reporter's Notes (2019): The form was revised to provide for contact information.
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FORM 28.

[Caption]

ACCEPTANCE OF APPOINTMENT AS GUARDIAN

The undersigned, _____, having been appointed guardian of the [person] [estate] [person and estate] of _____, an incapacitated person, hereby accepts the appointment.

Date: _____, ____.

[Signature]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

Reporter's Notes to Form 28: This form is to be used only when no bond is required of the guardian.

Addition to Reporter's Notes (2019): The form was revised to provide for contact information.

FORM 30.

[Caption]

INVENTORY OF WARD'S ESTATE

The undersigned, guardian of the estate of _____, an incapacitated person, states on oath that to the best of my knowledge and belief, the following is a complete and accurate inventory of all property owned by the ward at the time of my appointment as such guardian, and that the amount set opposite each item of property is its fair market value at the time it came under my control as guardian:

REAL ESTATE

Legal Description and Extent of Ward's In- terest	Encumbrances, Liens, Etc., and Net Value	Respective Amounts Thereof
_____	_____	\$ _____
_____	_____	\$ _____

Total value of real estate: \$ _____

PERSONAL PROPERTY

Household Goods and Personal Effects

[This list should include, but not be limited to, furniture, household and yard equipment, clothing, jewelry, etc.]

Description	Encumbrances, Liens, etc., and Net Value	Respective Amounts Thereof
_____	_____	\$ _____
_____	_____	\$ _____

Other Tangible Personal Property

[This list should include, but not be limited to, automobiles and other motor vehicles, farm equipment, livestock, agricultural products, stocks of merchandise, any going business enterprise or interest therein, etc.]

Description	Encumbrances, Liens, etc., and Net Value	Respective Amounts Thereof
_____	_____	\$ _____
_____	_____	\$ _____

Intangible Personal Property

[List separately in detail: cash on hand; money on deposit, stating names and addresses of depositories; bonds, stating names of issuers, interest rates, classes, maturity dates, serial numbers, face amounts, and dates to which interest is paid; corporate stocks, stating certificate numbers, names of issuers, classes, and number of shares; notes receivable, stating the names and addresses of makers, dates, amounts, interest rates, and dates to which interest paid, balances due, maturities, and security, if any; accounts receivable, stating names of debtors, dates of last items and balances due; and other intangibles, describing in detail.]

Description	Encumbrances, Liens, etc., and Net Value	Respective Amounts Thereof
_____	_____	\$ _____
_____	_____	\$ _____

Total value of personal property: \$ _____

SUMMARY

Total real property: \$ _____

Total personal property: \$ _____

Total estate: \$ _____

The undersigned is not indebted or obligated to the ward except as stated herein.

Date: _____, ____.

[Signature]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

[Affidavit]

Reporter's Notes to Form 30: Paragraph (a) of Ark. Code Ann. § 28-65-321 provides that the inventory is subject to the same requirements for the inventory of a decedent's estate. *See* Ark. Code Ann.

§ 28-49-110. Among those requirements is an affidavit.

Addition to Reporter's Notes (2019):

The form was revised to provide for contact information.

FORM 31.

[Caption]

ACCOUNTING BY GUARDIAN

_____ respectfully submits to the court
[his] [her] account as guardian of the estate of
_____ for the period beginning on [date]
and ending on [date]. This account is submitted because [insert the
occasion for filing of account as set forth in Ark. Code Ann. § 28-65-
320].

1. Charges to accountant: [If this is the first account, the first item should be the value of the estate as reflected by the inventory. If a subsequent account, the first item should be the balance shown on the previous account. Thereafter list separately and describe in detail (a) additional property received by accountant; (b) all income; and (c) gains from the sale, conveyance or other disposition of any property received

by the accountant during the accounting period. Show the date of each transaction.]

Total charges to accountant: \$ _____

2. Credits, other than payments to distributees, to which accountant is entitled: [List separately (a) all disbursements, other than payments to distributees, and (b) all losses sustained on sales, conveyances or other dispositions of any property, describing each item in full. Show the date of each transaction.]

Total: \$ _____

3. Credits for money paid or assets delivered to distributees: [Itemize each disbursement of cash and describe in detail other assets delivered, showing opposite each asset the amount at which its value was estimated in the inventory or, if purchased by the accountant, its cost. Show the date of each transaction.]

Total: \$ _____

SUMMARY OF ACCOUNT

Charges to accountant: \$ _____

Credits as per paragraph 2: \$ _____

Credits as per paragraph 3: \$ _____

Total Credits: \$ _____

Balance remaining in hands of accountant: \$ _____

4. Description of balance remaining in hands of accountant: [List separately and describe in detail each item of property remaining in the accountant's hands, showing the inventory value or cost of each.]

5. Changes in form of assets not affecting balance: [List separately and describe in detail all changes in the form of assets resulting from collections or sales at inventory or cost value and other such transactions. Show the date of each transaction.]

6. All outstanding liabilities of the estate of which accountant has knowledge are:

Total Liabilities: \$ _____

Vouchers evidencing cash disbursements and receipts evidencing other assets delivered for which accountant has taken credit are attached to this account.

THEREFORE, having fully accounted for the administration of this estate for the period set out above, accountant requests that, after proper advertisement and notice, if any, required by the law or by the court, this account be examined, approved, and confirmed by the court, and that accountant be allowed the sum of \$ _____ as [his] [her] fee for services rendered during the period covered by this account.

Date: _____, ____.

[Signature]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

[Affidavit]

Reporter's Notes to Form 31: Pursuant to Ark. Code Ann. § 28-65-320, a guardian of the estate must file with the court annually, within 60 days after the anniversary date of his or her appointment and also within 60 days after termination of his or her guardianship, a written verified accounting. Notice of hearing of every accounting must be given to the same persons in the same manner as

required in connection with the petition to appoint the guardian, except that the court may dispense with notice to a mentally incompetent ward upon a satisfactory showing that such notice would be detrimental to his or her well-being.

Addition to Reporter's Notes (2019): The form was revised to provide for contact information.

Form 32.

[Caption]

ANNUAL REPORT OF GUARDIAN

_____, the duly appointed, qualified, and acting guardian of _____, an incapacitated person, submits this annual report to the court in accordance with Ark. Code Ann. § 28-65-322.

The current mental, physical, and social condition of the incapacitated person is: [Provide a summary.]

The present living arrangements of the incapacitated person are: [Describe those arrangements.]

The need for continued guardianship services is: [State whether there is a need for such services.]

Submitted with this annual report is the petitioner’s accounting of the guardianship estate for the period beginning on [date] and ending on [date].

Date: _____, ____.

[Signature]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

Reporter's Notes to Form 32: All guardians must file an annual report with the court, setting forth the matters reflected in this form. *See* Ark. Code Ann. § 28-65-322. Any other information which is requested by the court or is necessary in

the opinion of the guardian must also be included.

Addition to Reporter's Notes (2019): The form was revised to provide for contact information.

FORM 33.

[Caption]

AGREEMENT OF DEPOSITORY

The undersigned, being [a bank in Arkansas insured by the Federal Deposit Insurance Corporation] [a savings and loan association in Arkansas insured by the Federal Savings & Loan Association Corporation] [a credit union in Arkansas insured by the National Credit Union Administration], received on deposit from _____, as guardian of the estate of _____, an incapacitated person, the sum of _____ Dollars (\$ _____) in cash on [date] and agrees not to permit any withdrawal from these funds unless authorized by order of this court.

Date: _____, ____.

[Signature] [Authorized Officer or
Agent of Depository]

[Print Name]

[Address]

[Telephone Number]

[Email Address]

Reporter's Notes to Form 33: By statute, the court may dispense with a bond for the guardian when the entire guardianship is in cash deposited on interest in any of the institutions identified in the form, provided that the value of the estate so deposited is not greater than the maximum amount of insurance provided by law for a single depositor. Ark. Code

Ann. § 28-65-215(e). This form must be executed on behalf of the depository and filed with the probate clerk. For an enumeration of the types of authorized investments for guardianship funds, *see* Ark. Code Ann. § 28-65-311."

Addition to Reporter's Notes (2019): The form was revised to provide for contact information.

